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No. 11282

15.2441

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA, for the use
of RECONSTRUCTION FINANCE COR-
PORATION, a Federal Corporation, acting in
behalf of DEFENSE PLANT CORPORA-
TION, a Federal Corporation,

Appellant,

vs.

SAM BLOCK,

Appellee.

Transcript of Record

In Two Volumes


VOLUME I

Pages 1 to 264

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavit and Order Thereon re Sending Original Exhibits to Appellate Court	65
Affidavit in Support of Application for Consideration of Original Exhibits on Appeal..	549
Amended Answer of Sam Block	41
Appeal:	
Affidavit in Support of Application for Consideration of Original Exhibits on..	549
Certificate of Clerk on	67
Designation of Record on	58
Notice of Appeal to Circuit Court of Appeals from Judgment on	57
Order Extending Time on	57
Statement of Points on which Plaintiff Intends to Rely on	62
Stipulation re Record on	63
Application for Consideration of Original Exhibits and Order Dispensing with Printing..	547
Certificate of Clerk	67
Complaint in Condemnation	2
Declaration of Taking, No. 1	14

INDEX	PAGE
Designation of Record on Appeal	58
First Amended Complaint	22
Judgment Upon the Verdict	45
Motion for Leave to File Amended Complaint and Order Thereon	20
Motion for a New Trial	51
Motion to Modify and Amend Judgment on Verdict to Include Interest on Award.....	54
Names and Addresses of Attorneys of Record..	1
Notice of Appeal to Circuit Court of Appeals from Judgment	57
Order Dispensing With the Reproduction or Printing of Exhibits and Providing for the Consideration of the Originals	551
Orders Extending Time	57-58
Order for Immediate Possession	11
Order for Leave to File First Amended Com- plaint	21
Reporter's Transcript of Proceedings	69

Plaintiff's Exhibits:

1—Resolution of Board of Directors of Re- construction Finance Corporation dated Sept. 18, 1942	273
2—Amendatory Resolution	73

INDEX

PAGE

Plaintiff's Exhibits—(Continued)

3—Copy of Telegram from Leo Nielson to the Special Assistant to the Attorney General	75
4—Letter from the Attorney General to Irl D. Brett, enclosing Certified Copy of a Letter from the Asst. Secy. of the R.F.C. dated Sept. 19, 1942	79
5—Letter from the Attorney General to Irl D. Brett, dated Oct. 24, 1942	83
7—Copy of Oil & Gas Lease dated Nov. 13, 1934	278
8—Summary of Productions, by Months, Block's Oil Company, Colly No. 10 Well	292

Defendant's Exhibits:

A—Lands that are the Subject Matter of this Declaration and Taking	16
C—Inventory of the Property and Equipment Referred to	31
B—Amended Resolution of the R.F.C. of Oct. 4, 1943	276

Witnesses for Plaintiff:

Oliver, Graydon

—direct	279
—cross	322
—redirect	376, 390
—recross	386, 392

INDEX

PAGE

Witnesses for Plaintiff—(Continued)

Wents, John H., Jr.

—direct	394
—cross	402
—redirect	422

Witnesses for Defendant:

Bauer, Roy M.

—direct	265
---------------	-----

Block, Sam

—direct	134
—cross	141
—redirect	165
—recross	174

Crown, Walter J.

—direct	182, 229
—cross	240
—redirect	261
—recross	264

Owens, Ben D.

—direct	425
—cross	429

Rubin, Abraham

—direct	176
---------------	-----

Rush, J. D.

—direct	210
—cross	214
—redirect	217
—recross	221

INDEX	PAGE
Reporter's Transcript of Proceedings on Motion for New Trial	493
Statement of Points on Which Plaintiff Intends to Rely on Appeal	62
Statement of Points and Designation of Record	546
Stipulation for Consideration of Original Exhibits and Dispensing with Printing	548
Stipulation re Record on Appeal, Block's Lease	63
Verdict	490

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

EUGENE D. WILLIAMS

Special Assistant to the Attorney General,
808 U. S. Post Office & Court House Bldg.,
Los Angeles 12, Calif.

For Appellee:

DECHTER, HOYT, PINES & WALSH,

B. L. HOYT,

633-7 Subway Terminal Bldg.,
417 S. Hill St.,
Los Angeles 13, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, In and
For the Southern District of California, Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORATION, a Federal Corporation, acting in
behalf of DEFENSE PLANT CORPORATION, a Federal Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS
ANGELES, STATE OF CALIFORNIA;
CITY OF LOS ANGELES, a municipal corporation; COUNTY OF LOS ANGELES, a
body politic and corporate; STATE OF CALIFORNIA, a corporation sovereign; ASSOCIATED LAND OWNERS, INC., a corporation;
DOE ONE to DOE TWO THOUSAND,
Defendants.

COMPLAINT IN CONDEMNATION

To the Honorable, the United States District Court:

Comes Now the plaintiff, United States of America, on behalf, for the use, and at the request of Reconstruction Finance Corporation, by Leo V. Silverstein, United States Attorney for the Southern District of California, Irl D. Brett, Special Assistant to the Attorney General, and Frederick

H. Steinmetz, Special Attorney, Lands Division, Department of Justice, as its attorneys, on application of the duly authorized officer of the United States, hereinafter referred to as the "Requesting Officer," and under the direction and by authority of the Attorney General of the United States, for cause of action against the above named defendants, and each of them, complains and alleges:

I.

That the plaintiff is entitled to acquire, by the exercise of its power of eminent domain, the property hereinafter described, for the uses and purposes hereinafter set forth.

II.

That in accordance with the provisions of the statutes hereinafter set forth, said Requesting Officer, for and in behalf of the United States, has designated and determined the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected such property for acquisition by the United States in these proceedings, and said selection, designation, and determination ever since have been and now are in full force and effect; that the purposes for which the plaintiff is taking said property as hereinafter alleged are necessary and constitute a public use, which use is authorized by law; that the acquisition thereof by plaintiff is, and will be, of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has

heretofore been appropriated to any public use, and if any part or portion thereof has heretofore been appropriated to a public use, the use to which said property is herein sought to be condemned and appropriated is a more necessary and paramount public use. [3]

III.

That plaintiff is informed and believes, and upon such information and belief alleges, that the parcels of property hereinafter described constitute the whole of various parcels, and not parts thereof.

IV.

That plaintiff has named herein by their true names, or by fictitious names, all defendants known by it to have some interest in said property; that there may be other persons having some interests therein whom the plaintiff hereby identifies as unknown persons, and makes such unknown persons defendants herein, to the end that said property may be vested in the United States of America to the extent hereinafter prayed for.

V.

That the defendants Doe One to Doe Two Thousand, inclusive, Defendants One Doe Corporation to Five Hundred Doe Corporation, inclusive, Defendants One Doe Company to Five Hundred Doe Company, inclusive, and Defendants One A Doe to Two Hundred A Doe, inclusive, as the Executors or Administrators, respectively, of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive, are each sued or named herein under the fictitious names above set out, for the reason that

plaintiff is ignorant of the true names of said defendants or decedents; that when the true names of said defendants or decedents, or any of them, are discovered, plaintiff will amend accordingly, the pleadings or proceedings herein.

That One Doe Corporation to Five Hundred Doe Corporation, inclusive, are corporations organized and existing under the laws of one of the states of the United States; that One Doe Company to Five Hundred Doe Company, are co-partnerships duly organized and existing, each one of which is composed of two or more co-partners; that One A Doe to Two Hundred A Doe, inclusive, are, respectively, the duly appointed, qualified and acting Administrators or Executors of the Estates of One B Doe, Deceased, to Two Hundred B Doe, deceased, inclusive.

VI.

That this action is brought by the plaintiff under the authority of [4] and in accordance with subparagraph (5) of Section No. 5d of the Reconstruction Finance Corporation Act (15 U.S.C. 601-617) as amended by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), and executive Order 9217, issued by the President of the United States on August 7, 1942, which Acts and Executive Order authorize the Reconstruction Finance Corporation to acquire and dispose of property deemed necessary for military, naval or other war purposes; that the public use for which the property hereinafter described is sought to be taken

is the establishment of a reservoir for the storing and conservation of natural gas.

VII.

That the "Requesting Officer" hereinbefore mentioned is Leo Neilson, Assistant Secretary of the Reconstruction Finance Corporation, an agency of the United States. That by letter to the Attorney General of the United States, dated September 19, 1942, said Requesting Officer requested the institution of this proceeding, for the purposes hereinabove and hereafter designated, on behalf of the Defense Plant Corporation, a Federal corporation, which is wholly owned and controlled by the above mentioned Reconstruction Finance Corporation.

IX.

That the estate or interest in the property hereinafter described which plaintiff, by this action, intends and seeks to take, acquire, condemn, [5] hold and own is the full fee simple title, subject, however, to existing easements for public utilities.

X.

That the property hereinabove mentioned, which is to be taken and condemned in this action, consists of those certain lots, pieces or parcels of land situated in the County of Los Angeles, State of California, described as follows, to wit:

Parcel One

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, in-

clusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114, in Block 36. [6]

XI.

That the urgency for obtaining immediate possession and exclusive use and control of the property herein sought to be taken is such that plaintiff has not been able to procure accurate information as to the various ownerships of the above described parcels of land; and for such reason plaintiff is not able to allege the names of the owners and claimants separately claiming interests in such separate parcels; that the defendants named in the caption of this complaint by true names are apparent and presumptive owners of some part or portion of the property herein sought to be acquired, and that the

defendants herein sued under fictitious names claim some right, title or interest in or to said property, or some part thereof; that plaintiff intends to and will prepare and file an amended complaint, setting forth said separate ownerships [9] and true names where ascertained, and prays leave of court to prepare, serve and file such amended complaint when the necessary information has been obtained by it.

XII.

That the defendant State of California is a corporation sovereign; that the defendant County of Los Angeles is a body politic, organized and existing under and by virtue of the laws of the State of California; that the defendant City of Los Angeles is a municipal corporation, organized and existing under and by virtue of the laws of the State of California.

XIII.

That under the provisions of the Second War Powers Act of 1942, approved March 27, 1942 (Public Law 507, 77th Congress), it is provided, in part, as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used and improved for the purposes of the Act notwithstanding any other law;”

that by reason thereof the United States is entitled to immediate possession and use of the property herein sought to be condemned;

That the Assistant Secretary of the Reconstruction Finance Corporation, in a letter dated September 19, 1942, mentioned in Paragraph VII of this complaint, stated, in part, that it is vital to the successful prosecution of the war that the United States be granted the immediate right of possession of the hereinabove described property, and requested the securing by the United States of such right of immediate possession.

Wherefore, plaintiff prays judgment:

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned, and of each and every separate estate or interest therein;

2. Adjudging that the public uses for which plaintiff takes and condemns said lands are necessary public uses of the plaintiff, and that the uses to which said property are to be applied are uses authorized by law, and that all of the said lands so taken are necessary thereto; [10]

3. Vesting in the United States of America full fee simple title to the lands hereinbefore described, subject, however, to existing easements for public utilities, and adjudging that said lands shall be deemed to be condemned and taken for the use of the United States for the purposes and uses hereinbefore set forth; and further adjudging that the right to just compensation for the lands hereinbefore described be vested in the persons entitled thereto as their respective interests may appear and be established by judgment herein;

4. That an Order issue from this Court vesting the right to immediate possession in the plaintiff of the lands hereinbefore described and sought to be condemned in this action, and directing all parties in possession thereof to forthwith yield up possession of the same to the plaintiff;

5. That all liens or encumbrances of record against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding;

6. For such other and further relief as the Court deems meet and proper in the premises and as the nature of the case may require.

Dated: This 28 day of September, 1942.

/s/ LEO V. SILVERSTEIN,

United States Attorney.

IRL D. BRETT,

Special Assistant to the
Attorney General

FREDERICK H. STEINMETZ,

Special Attorney, Lands Division,
Department of Justice.

/s/ By FREDERICK H. STEINMETZ,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 28, 1942. [11]

[Title of District Court and Cause.]

ORDER FOR IMMEDIATE POSSESSION

Upon a reading of the complaint in the above entitled action, and upon application of Frederick H. Steinmetz, Special Attorney, Lands Division, Department of Justice, for an order granting immediate possession of the property described in said complaint, pursuant to the Second War Powers Act of 1942, approved March 27, 1942 (Public Law 507—77th Congress); and upon the testimony in open Court of George H. Pannell, Appraiser for Defense Plant Corporation, and Paul M. Lee, Examiner for Reconstruction Finance Corporation, and good cause appearing therefor:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff, United States of America, is hereby granted the immediate possession of all of the hereinafter described property, excepting only those respective portions of the following lots occupied by the following persons or agencies: [12]

a. Residence of Mrs. Coppinger, at 8116 Delganey Avenue, Los Angeles, on Lot 16, Block 33, of Tract No. 9809, hereinafter described;

b. Pumping Plant and Reservoir of Palisades Del Rey Water Company, a corporation, on Lot 7, Block 15, of said Tract 9809;

c. Transformer Station of Bureau of Power and Light of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15, in said Tract 9809.

The property affected by this Order is more particularly described as follows: [13]

Those certain lots, pieces or parcels of land situated in the County of Los Angeles, State of California, described as follows, to-wit:

Parcel One

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36. [14]

It Is Further Ordered that copies of this Order shall be delivered to each of the persons or agencies hereinabove specifically mentioned, and that the United States Marshal shall forthwith post in a

conspicuous place upon each of the oil derricks and tanks within the above described area, a notice, substantially as follows:

“NOTICE

To All It May Concern

Under the Second War Purposes Act, this property is taken by the United States of America for war purposes.

You enter upon this property at your own hazard.

UNITED STATES OF AMERICA
By Defense Plant Corporation”

Dated this 28th day of September, 1942, at 11:44 o'clock a.m.

C. E. BEAUMONT,
United States District Judge.

Presented by:

LEO V. SILVERSTEIN,
United States Attorney.

IRL D. BRETT,
Special Assistant to the
Attorney General.

FREDERICK H. STEINMETZ,
Special Attorney, Lands Division,
Department of Justice.

By FREDERICK H. STEINMETZ,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 28, 1942. [18]

[Title of District Court and Cause.]

DECLARATION OF TAKING No. 1

To the Honorable, the United States District Court:

For and on behalf of Reconstruction Finance Corporation, a corporation duly created by the United States of America, pursuant to 47 Stat., Chapter 8, Pages 5-12, approved January 22, 1932 (15 U.S.C. 601-617), as amended, it is hereby declared that:

1. The lands hereinafter described are hereby taken in the name of United States of America, your petitioner, for the purposes hereinafter stated, under and in accordance with sub-paragraph (5) of Section 5d of the Reconstruction Finance Corporation Act (15 U.S.C. 601-617) as amended by the Act of Congress, approved March 27, 1942 (Public Law 506, Seventy-seventh Congress 15 U.S.C. 606 b) which amendatory act authorized the acquisition of land in the name of United States of America, petitioner herein, upon application of Reconstruction Finance Corporation, pursuant to the provisions of the Act approved August 1, 1888 (25 Stat. 357) as amended, and Sections 1, 2 and 4 of the Act approved February 26, 1931 (46 Stat. 1421) as amended. [19]

2. It has been determined to be necessary and advantageous to the carrying out of the authority vested by Reconstruction Finance Corporation in Defense Plant Corporation, a corporation created pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended (47 Stat. Chap-

ter 8, Pages 5-12) to acquire the lands hereinafter described, in order to provide facilities for the storage of natural gas; and

3. A general description of the lands being taken is set forth in Exhibit "A," attached hereto and made a part hereof, and is a description of a portion of the lands described in the petition filed in the above entitled cause.

4. A plat showing the lands taken is attached hereto and made a part hereof, and is designated Exhibit "B."

5. The estate taken for said public uses is the absolute fee simple title thereto, subject, however, to existing easements for public utilities.

6. The sum estimated by Reconstruction Finance Corporation as just compensation for said lands with all buildings and improvements thereon and all appurtenances thereto, and including all interests hereby taken in said lands is fully set forth in Exhibit "A," attached hereto and made a part hereof, which sum has been duly authorized to be deposited, and the said sum herewith is deposited in the Registry of this Honorable Court, for the use and benefit of the persons entitled thereto.

In Witness Whereof, the petitioner has caused this declaration to be signed in its name by Reconstruction Finance Corporation, which has duly secured the executing of this declaration by its Assistant Treasurer, and its corporate seal to be affixed, and to be duly attested by its Assistant Secretary pursuant to authorization by the Board of

Directors, this 22nd day of October, 1942, in the City of Washington, District of Columbia.

[Seal]

RECONSTRUCTION FINANCE
CORPORATION

By H. L. SULLIVAN,

Assistant Treasurer.

Attest:

By M. C. MULLIGAN,

Assistant Secretary. [20]

EXHIBIT "A"

The lands which shall be the subject matter of this Declaration of Taking are situated in the City of Los Angeles, State of California, and are more fully described as follows:

Parcel One

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33;

Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36.

Excepting Therefrom (1) pumping plant and reservoir of Palisades Del Rey Water Company, a corporation, in Lot 7, Block 15 of said Tract 9809; (2) transformer station of Bureau of Power and Light of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15 in said Tract 9809. [21]

ESTIMATED JUST COMPENSATION

Seven hundred forty thousand, four hundred sixty-nine dollars (\$740,469.00).

[Endorsed]: Filed Oct. 26, 1942. [22]

LANDS DIVISION ACQUISITION

Re: United States v. Certain Parcels of Land in County of Los Angeles, State of California, etc., et al. Civil No. 2454-B, Department of Justice Reference No. RJL-ICH 33-5-882.

Acquisition in behalf of the Reconstruction Finance Corporation, acting in behalf of Defense Plant Corporation.

To: August Weymann, a duly licensed and practicing attorney of the State of California admitted to practice in the Federal Courts of the Southern District of California and a duly appointed and qualified Special Attorney of the Department of Justice, Lands Division, assigned to the Los Angeles office of the Department of Justice and under the supervision of the undersigned.

Under and pursuant to the authority vested in me by letter from the Attorney General dated October 19, 1943, you are hereby appointed as co-counsel in the above entitled action and authorized and directed to appear as an attorney of record on behalf of the plaintiff in said case and to otherwise participate in the conduct of said cause and take any and all proceedings necessary and proper to conclude said action, including the entry of final judgment therein.

Done at Los Angeles, California, this 1st day of November, 1943.

/s/ IRL D. BRETT,

Special Assistant to the
Attorney General

[Endorsed]: Filed Dec. 3, 1943. [23]

(Department of Justice Seal)
Office of the Attorney General
Washington, D. C. (25)
March 31, 1944

Mr. Irl D. Brett
Special Assistant to the Attorney General
and

Mr. August Weymann
Special Attorney, Lands Division
Department of Justice
808 Federal Building
Los Angeles 12, California

Gentlemen:

You and each of you are hereby specially ap-

pointed, designated, directed, and empowered to appear as attorneys of record for and on behalf of the United States of America in the condemnation cases designated by Civil Numbers 2454-B, 3128-OC and 189-ND, pending in the District Court of the United States in and for the Southern District of California, Central and Northern Divisions, including all tracts therein.

You and each of you are further specially directed and empowered to prosecute to a conclusion the above-identified proceedings and to sign and file all pleadings, stipulations, and other documents therein which you or either of you from time to time may deem necessary or expedient.

I hereby ratify and confirm all acts heretofore taken by you or either of you in the above proceedings.

Respectfully,

FRANCIS BIDDLE,

Attorney General. [24]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEY

To the Above Entitled Court, and to the Attorneys
for the Defendants:

Please take notice that by written direction of the Attorney General dated June 5, 1944, filed with the Clerk of this Court on June 9, 1944, Eugene D. Williams, Special Assistant to the Attorney General,

is hereby substituted for and in the place and stead of Irl D. Brett, Special Assistant to the Attorney General, as attorney for the Plaintiff in the above entitled action.

Dated: June 9, 1944.

/s/ EUGENE D. WILLIAMS,
Special Assistant to the At-
torney General
Attorney for Plaintiff.

/s/ IRL D. BRETT,
Special Assistant to the
Attorney General.

So Ordered: Dated June 13th, 1944.
PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed June 13, 1944. [25]

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE AMENDED
COMPLAINT AND ORDER THEREON

Comes now the plaintiff in the above entitled action and moves the Court for leave to file its First Amended Complaint herein as and for its Complaint in said action, which said proposed First Amended Complaint is presented herewith.

Said motion is made upon the Affidavit of August Weymann, Special Attorney, Lands Division, De-

partment of Justice, verified the 11th day of January, 1944, the written Stipulation of Bodkin, Breslin and Luddy, the attorneys of record for the defendant Treasure Company, and the written Stipulation of Leland J. Allen, [26] the attorney of record for the defendants The Adamant Company, Walter B. Scoville and Harry Wynn.

Dated: January 12, 1944.

IRL D. BRETT,
Special Assistant to the
Attorney General

By A. WEYMANN,
Attorney for Plaintiff.

ORDER

Upon the motion of plaintiff for leave to file its First Amended Complaint herein, and good cause appearing therefor, and it appearing that the only parties entitled to notice of said motion have by written stipulation waived such notice,

It Is Ordered that the plaintiff have leave to file its First Amended Complaint presented on said motion.

Dated: January 12, 1944.

C. E. BEAUMONT,
United States District Court
Judge.

[Endorsed]: Filed Jan. 12, 1944. [27]

In the District Court of the United States, In and
For the Southern District of California, Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORATION, a Federal Corporation, acting in behalf of DEFENSE PLANT CORPORATION, a Federal Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; SAM
BLOCK,

Defendants.

FIRST AMENDED COMPLAINT

Comes now the plaintiff, United States of America, and upon leave of Court, first duly had and obtained, files this, its First Amended Complaint, on behalf, and at the request, of Reconstruction Finance Corporation, a Federal corporation, by its duly authorized officer, hereinafter referred to as the "Requesting Officer," and under the direction and by the authority of the Attorney General of the United States, and for cause of action against the above named defendants and each of them, complains and alleges:

I.

That the plaintiff is entitled, empowered and authorized to acquire by the exercise of the power of eminent domain, all of the property hereinafter described, for the uses and purposes hereinafter set forth.

II.

That pursuant to the provisions of the statutes hereinafter set forth the said Reconstruction Finance Corporation, by its said Requesting Officer for and in behalf of the United States, has determined that the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected and designated such property for acquisition by the United States in these proceedings, and that said selection, designation, and determination ever since have been and now are, in full force and effect. That the purposes for which the plaintiff is taking said property, as hereinafter set forth, are necessary and constitute a public use, which use is authorized by law; that the acquisition of said property is and will be of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has heretofore been appropriated to any public use; and, if any part or portion thereof has heretofore been so appropriated, the use to which said property is herein sought to be condemned and appropriated, is a more necessary and a paramount public use.

III.

That plaintiff is informed and believes, and upon such information and belief alleges, that the property described under each parcel number as hereinafter set forth, constitutes the whole of the parcel and not a part or portion of a parcel. [30]

VI.

That this action is brought by the plaintiff under the authority and pursuant to the provisions of the Act of Congress, approved January 22, 1932, (U.S.C. 601-617) as amended, and Public Law 507, 77th Congress, approved March 27, 1942, and Executive Order 9217, issued by the President of the United States [31] on August 7, 1942, by virtue of and pursuant to authority vested in him by Title II of the Second War Powers Act, 1942, approved March 27, 1942 (Public Law 507, 77th Congress), which acts and executive order authorizes the Reconstruction Finance Corporation to acquire by condemnation property deemed necessary for military, naval, or other war purposes.

VII.

That the public use for which the property hereinafter described is sought to be condemned and taken is the establishment of a reservoir for the storing and conservation of natural gas to relieve a shortage of gas which would impede the war effort; that the said Reconstruction Finance Corporation has determined that it is necessary for war purposes to acquire the property hereinafter described, for the establishment of the said reservoir.

VIII.

That the Requesting Officer hereinbefore mentioned is Leo Neilson, Assistant Secretary of the Reconstruction Finance Corporation; that said Reconstruction Finance Corporation is an agency of the United States; that by letter to the Attorney General of the United States, dated September 19, 1942, said Requesting Officer requested the institution of this proceeding for the purposes herein set forth, on behalf of the said Reconstruction Finance Corporation, and of Defense Plant Corporation, a Federal corporation; that said Defense Plant Corporation is an agency of, and is wholly owned and controlled by the aforesaid Reconstruction Finance Corporation.

That on September 18, 1942, said Reconstruction Finance Corporation, by a resolution duly adopted by its Board of Directors, resolved and determined that it was necessary for war purposes that the property, real, personal, and mixed, herein described, be acquired by condemnation, and that in connection therewith, the immediate right to occupy, use and improve said property be acquired; that its secretary or assistant secretary be authorized, and are authorized, and directed, to request the Attorney General of the United States to cause the necessary proceeding to be instituted for the condemnation and taking of said property, and further, to cause the necessary action to be taken to occupy, use, and improve said property, pursuant to the provisions of the Act of Congress, approved March 27, 1942 (Public Law 507—77th Con-

gress) and Executive [32] Order 9217, issued by the President of the United States, August 7, 1942, by virtue of and pursuant to authority vested in him by said Public Law 507, 77th Congress.

X.

That the estate or interest in the property hereinafter described which the plaintiff in this action intends and seeks to take, acquire, condemn, hold, and own is:

(a) The full fee simple title to the real property hereinafter described, subject, however, to existing easements for public utilities:

(b) Title to all the personal property and trade fixtures, hereinafter described, free and clear of all liens and encumbrances, located on said real property or on any part thereof, on the 28th day of September, 1942.

XI.

The real property hereinabove mentioned which is to be taken and condemned in this action consists of those certain lots, pieces, or parcels of land situated in the County of Los Angeles, State of California, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, together with all buildings, structures, works and fixtures located in or upon said parcels of land or any of them and which are a part of the said realty; said parcels of land are more particularly described as follows, to-wit: [33]

Parcel 87

Lots 2, 3, 4, 7, 8, 24 to 34 inclusive, 37 to 45 inclusive, Lot 35 except the East 20 feet thereof and Lot 36 except the West 20 feet thereof, Block 13 of Tract No. 9809 in the City of and County of Los Angeles, State of California, as per map recorded in Book 145 Pages 91 to 96 inclusive of Maps in the office of the County Recorder of said County.

Also all those portions of 83rd Street (formerly Salazar Drive) Gulana Avenue, Manchester Avenue and Saran Drive, to the centers thereof, which lie in front of said land. [34]

Parcel No. 103

Lots 1 to 24 inclusive in Block 14 of Tract No. 9809, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 145 Pages 91 to 96 inclusive of Maps in the office of the County Recorder of said County.

Also all those portions of Saran Drive, Manchester Avenue, Gulana Avenue, Talbert Avenue and Talbert Street (formerly Talbert Avenue), to the centers thereof, which lie in front of said lots.

XIII.

That the property which the plaintiff by this action intends and seeks to take, acquire, and condemn, hold and own, includes the following:

All pipe, machinery, appliances, equipment, tanks, structures, tools, supplies, and all other property, whether real or personal, which were located

in or upon any of the said tracts of land hereinabove described on the 28th day of September, 1942, and which on said day were used, or were useful, in the operation of any oil and/or gas wells, upon any of said parcels of land, or in the treating, storing, or disposing of the products of any of such wells.

XIV.

That plaintiff is unable to determine at this time how much of the property generally described in the last preceding paragraph is to be deemed part of the real property on which it is located, for the reason that plaintiff does not now know the terms of the oil and gas leases under which said property was placed upon the premises for the purpose of producing oil and gas therefrom; and plaintiff therefore designates all of said property as personal property and trade fixtures, solely for the purpose of identifying the same as part of the property to be taken in this proceeding, and will ask leave of Court to amend this complaint accordingly if and when it shall be ascertained that any of the property herein designated as personal property and trade fixtures is, in fact, part of the realty upon which it is located.

XV.

That an inventory of all of the property referred to and described in the last two preceding paragraphs hereof is filed with the Clerk of this Court for the inspection of any interested party, and the plaintiff will, upon demand, deliver a copy thereof to any party to this proceeding.

XVI.

That under the provisions of the Second War Powers Act of 1942, [36] approved March 27, 1942 (Public Law 507—77th Congress), it is provided, in part, as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used and improved for the purpose of the Act notwithstanding any other law;”

that by reason thereof the United States is entitled to immediate possession and use of the property herein sought to be condemned;

That the Assistant Secretary of the Reconstruction Finance Corporation, in a letter dated September 19, 1942, mentioned in Paragraph VIII of this complaint, stated, in part, that it is vital to the successful prosecution of the war that the United States be granted the immediate right of possession of the hereinabove described property, and requested the securing by the United States of such right of immediate possession.

Wherefore, plaintiff prays judgment;

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned and of each and every separate estate or interest therein.

2. Adjudging that the public uses for which plaintiff takes and condemns said property are nec-

essary public uses of the plaintiff and that the uses to which said property are to be applied are uses authorized by law and that all of the said property so taken is necessary thereto.

3. Adjudging that the full fee simple title to the lands hereinbefore described is vested in the United States of America subject, however, to existing easements for public utilities; and further adjudging that title to all of the property, whether real, personal or mixed, used or useful in connection with the operation of any oil and/or gas wells upon any of said parcels of land or in the treating, storing or disposing of the products of any such wells is vested in the United States of America free and clear of all liens and encumbrances; and further adjudging that the right to just compensation for the lands and property hereinbefore described is vested in the persons entitled thereto, as their respective interests may appear and be [37] established by judgment herein.

4. That an order issue from this Court vesting the right to immediate possession in the plaintiff of the lands and property herein described and sought to be condemned in this action and directing all parties in possession thereof to forthwith yield up possession of the same to the plaintiff.

5. That all liens or encumbrances against any of the property sought to be taken and condemned herein be satisfied out of the award or awards to be made in this proceeding.

6. That the plaintiff have such other and fur-

ther relief as to the Court may seem just and proper in the premises and as the nature of the case may require.

IRL D. BRETT

Special Assistant to the
Attorney General

By /s/ IRL D. BRETT

Attorney for Plaintiff

[Endorsed]: Filed Jan. 12, 1944. [38]

[Title of District Court and Cause.]

EXHIBIT "C"

Inventory of the Property and Equipment Referred
to in Paragraphs XIII, XIV and XV of the
First Amended Complaint Filed Herein, and
Which is to be Acquired by Condemnation in
the Above Entitled Action. [39]

INDEX

Companies and	
Well Locations	Page
Block Oil Co. No. 10.....	1-5
Del Rey Oil & Gas Co.....	148-151
Del Rey Oil & Gas Co. Line.....	143
Del Rey No. 4	114-115
Del Rey No. 5	116
Del Rey No. 9.....	117-118
Harper Well No. 1.....	6-14
Herndon Well No. 29-2.....	14-18
Kelley, Th. & L. C. No. 1.....	18-25

Companies and

Well Locations	Page
McAdams Del Rey No. 1.....	25-34
McAdams Del Rey No. 2.....	35-45
McAdams-Elliott No. 1	46-54
McAdams-Elliott Tank Setting	147
McAdams Tool House	55-59
Petrol Big Ben No. 1.....	60-63
Petrol Oil Co. (at McAdams del Rey No. 1)...	63-65
Royalty Service Corp.	66-97 (& 152)
Well 12-1	74-75
Well 13-1	75-77
Well F-1	77-78
Well L-1	78-79
Well L-4	79-80
Well Pomoc No. 1	80-81
Well 24-2	82-83
Well L-3	83-84
Samarkand Oil Co.	98-104
So. Cal. Drilling Co. Well No. 1.....	152
Treasure Well No. 1	105-113
Triangle Oil and Refining Co.	144-146
Vidor No. 1	119-120
Vidor No. 2	121
Vidor No. 3	122
Vidor No. 5	123-124
Vidor No. 6	125
Vidor No. 7	126
Vidor No. 8	127
Vidor No. 9	128
Vidor No. 10	129
Vidor No. 11	130

Companies and	
Well Locations	Page
Vidor No. 12	131
Vidor No. 13	132
Vidor No. 14	134
Vidor No. 15	135-136
Vidor No. 16	137
Vidor No. 17	138
Vidor Nos. 7, 8, 10, 12, 13	133
Vidor Lease Tank Setting	139-142
Main Lines	141
Roads	142

Union Oil Company of California. Inventory of Materials and Supplies Taken Over by Defense Plant Corporation—September 29, 1942. Block Oil Company, 1055 S. La Brea St., Los Angeles, California.

Quantity	Description
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Block Oil Company No. 10

1	Buda Y R 425 Cly. Gas Engine
1	10" 8 Groove C Section Pulley (Reduction Gear)
1	8" 8 Groove C Section Pulley (Motor)
8	V Belts 3' centers
1	Westinghouse Reduction Gear
	Ratio 32.1 Serial N. 11597 Style SE 389
6'	3/4" Garden House
1	3/4 x 4" Nipple
1	1 x 3/4 Bushing

Quantity	Description
	Block Oil Company No. 10
1"	Collar
2	1" x Clo. Nipple
1	1" guick opening valve
4	1 x 4 Nipple
1	1" Street Ell
1	12" x 5' Gas Drip
1	1 x 6 Nipple
1	1" Fisher House Regulator
3	1" Std. Mall Ell
2	1" Clip Gate
1	1" Std. Mall Tee
1	1" x 24" Nipple
1	1" R R Union
50'	1" Line Pipe
1	Bowlers Crank w/12 weights
1	Emsco Pitman
1	Morgan Wrist Pin
1	24" Wood Walking Beam
15'	1030 Rotary Chain
1	1" x 48" Turo Buckle
1	16" x 16" Wood Sampson Post w/8" x 8" Brace
1	Ratigan Rocker
1	Horse Head unknown make
1	Ratigan Carrier Bar
1	Ratigan No. 50 Polish Rod Grip
22'	11¼" Wire Line Sling w/Babbit Ratigan "Is"
1	8" x 12" x 8" Chemical Tank
1	Manzel Treolite Pump w/check valve and sight glass
3	¼" Stop cocks

Quantity	Description
Block Oil Company No. 10	
10	1/4" Copper Tubbing
2	1/4" Copper Tubbing Connection
1	3 x 12 Nipple
2	3" Std. Mall Ell
2	3" Std. Mall Tee
3	3 x 5 Nipple
1	3" Kew Union
10'	3" 8 T L Pipe
2	2 1/2 Gal. Foamite Ext.
2	2" x 6" Nipple
4	2" x 4" Nipple
2	2" L P Collar
1	2" Std. Mall Ell
2	2" x 12" Nipple
1	2" Std. Mall Tee
3	2" Std. Clip Gate
25'	2" Line Pipe
2	2" Std. Mall Tee
1	2" C I Plug
1	2" R R Union
1	2" Std. Brass Gate Valve
1	65/8 Baash Ross Tubing Head w/3" Side outlet 4" M Con. Top.
1	3" x 2" Bushing
1	1/4" x 4" Nipple
2	1/4" c Clo. Nipple
1	1/4" Brass Valve
1	1/4" Brass Stop Cock
1	3" x 6" Nipple
1	3" x 4" Nipple

Quantity	Description
	Block Oil Company No. 10
1	3" N.R.S. Sed. I.B.B.M. Gate Valve.
1	3" x 2" Swage
1	2" Collar
60	2" - 11½ T Line Pipe
3	2" x 4" Nipple
3	2" x 8" Nipple
2	2" Std. Mall Tee
1	2" x ½" Bushing
2	½" x 6" Nipple
1	½" Brass Clo Valve
2	2"Std. Mall Ells
1	2" R R Union
1	2" x 18" Nipple
1	2" Std. Brass Swing Ck. Valve
1	2" Collar
1	3" x 2" Swage Nipple
1	4" L P Collar
1	4" x 3" Swage
1	3" E H Mall Cross
1	3" x 1" Swage Nipple
1	1" Tee
2	1" x 4" Nipples
1	1" Clip Gate
1	1" x ½" Bushing
1	½" x ¼" Bushing
1	¼" Street Ell
1	3" Oil Well Imperial "C" Stuff. Box
32'	3" 8T Line Pipe
4	3" Kew Union
4	3" x 6" Nipples

Quantity	Description
	Block Oil Company No. 10
1	1" Tee
1	1" x 1½" Bushing
1	½" x 4" Nipple
1	½" Clip Gate
1	1" x Clo. Nipple
1	1" x 4" Nipple
1	1" Clip Gate
1	1" Std. Mall Ell
1	1" x 1½" Bushing
1	3" I.B.B.M. Swing Ck. Valve
1	3" Crane Std. N.R.S. Sed. Gate Valve
1	3" Std. Mall Tee
1	Trumble Gas Trop 20" w/D Slide Valve
1	2" Mall Ell
1	3" x 2" Swage
3	3" x 12" Nipples
3	3" Std. Mall Ell
1	4" x 3" Swage
1	3" Relief Valve
1	1" x 36" Turo Buckle
1	3" x 2" x 2" Mall Tee
1	3" x 2½" Swage Nipple
40'	2½" Line Pipe
1	2½" R. R. Union
1	2½" Std. Mall Ell
2	2" Std. Mall Ell
30'	2" - 11½" Line Pipe
1	2" Tee
1	2" x 1½" Bushing
2	½" x 6" Nipples

Quantity	Description
	Block Oil Company No. 10
2	1½" x 2" Nipples
1	1½" Tee
1	1½" Clip Gate
1	1½" Brass Glo Valve
1	1½" x ¼" Bushing
1	¼" Copper Tub Con
1	2" x 6" Nipple
1	2" Brass Glo Valve
2	2" x 1½" Bushing
1	1½" x 8" Nipple
1	1½" American Sec. Relief Valve
2	1½" x 4" Nipples
1	1½" Ell
1	2" R R Union
1	122' McClintock & Marshall Derrick 8 x 8 x 1½" Starting Legs, Straight Ladder, Run-around and Crows nest and wood finger
1	2" Sheave Prod. Crown
500'	1" Tubbing Line
200	½" Conduit Galv.
5	Reflectors 16"
8	½" Conduit outlets
550'	2½" Line Pipe T & C
1	2½" Mall Ell
1	2½" x 3" Swage
1	3" Kew Union
1	3" x 4" Nipple
1	3" L P Collar
1	4" x 3" Swage Nipple
1	4" Mall Tee

Quantity	Description
	Block Oil Company No. 10
1	4 x Clo Nipple
1	4" Clip Gate
1	6" x 4" Swage
1	6" Tank Flange
1	4" x 2" Swage
6	2" Clip Gates
11	2" x 6" Nipples
5	2" Mall Tees
13	2" Mall Ells
2	2" L P Collars
300'	2" Line Pipe
10	2" R R Unions
1	2 x Clo Nipple
1	2" x 8" Nipple
4	2" x 10" Nipples
1	2" 45 Ell
1	2" Tank Flag
2	1½" Tank Flanges
2	1½" Brass Glo Valves
2	1½" x 4" Nipples
1	1½" x 12" Nipple
1	1½" Street Ell
1	1½" Mall Ell
50	3" 8 T L Pipe
1	3" Mall Ell
1	2" Kew Union
1	2" CI Plug
1	Burros Dehydroating Heater 31" Dia x 6' high w/Stock
1	6" Rapid Tank Flange

Quantity	Description
	Block Oil Company No. 10
1	6" x 4" Swage
1	4" N R S I.B.B.M. Gate Valve
1	4 x Clo Nipple
2	4" Ell Mall
1	4" x 6" Nipples
60'	4" 8T Line Pipe
1	4" x 3" Swage
1	3" Clip Gate
10'	3" 8T Line Pipe
1	3" Bull Plug
1	3" Tank Flange
1	3" x 2" Swage
1	2" Clip Gate
1	2" x 8" Nipple
40'	4" 8T Line Pipe
1	4" Mall Tee
1	4" Mall Ell
2	4" x 3" Swages
2	3" Collars
80'	3" 8T Line Pipe
6	3" Mall Ells
8	3" x 4" Nipples
2	3" Kew Unions
2	3" Mall Tees
2	3" Clip Gates
2	3" Bull Plugs
4950'	3/4" Sucker Rods
1500'	7/8" Sucker Rods
6487'	2 1/2" 10-thread upset tubing
6275'	7" casing

Quantity	Description
	Block Oil Company No. 10
306'	5 $\frac{3}{4}$ " liner
1	16" Gaso Pump & Burner Co. vacume compressor Cyl. operated by Walking Beam 3" Suction 2" Discharge
10'	1240 Rotary Chain
2	2-3 Reag. 600 Boe Boiler Tanks
2	4" Rapid Tank Flanges

[Endorsed]: Filed January 20, 1944. [45]

[Title of District Court and Cause.]

AMENDED ANSWER OF SAM BLOCK

Comes now Sam Block, and upon stipulation and with leave of court first had, and files this, his amended answer to the amended complaint and admits, denies and alleges as follows, to wit:

I.

Answering the allegations of Paragraph 7, denies that on September 18, 1942, said Reconstruction Finance Corporation by resolution duly adopted or otherwise by its Board of Directors, resolved and determined that it was necessary for war purposes that the personal and mixed property in said complaint be acquired by condemnation, or that in connection therewith, the immediate right to take, use or improve said personal or mixed property be acquired, and denies that there was an authorization or direction to request the Attorney General of the

United States to cause the necessary proceeding to be instituted for the condemnation and taking of said personal or mixed property, and in this connection further alleges that no resolution, authorization or direction to take, acquire or use the personal or mixed property described [46] in said complaint was enacted or became effective until on or about October 24, 1943.

II.

Answering the allegations of paragraph IX, this answering defendant admits that he claims to have some right, title and interest in and to a portion of the property described in paragraph XI of said First Amended Complaint and designated therein as Parcel 87 and Parcel 103, and in this connection alleges that this answering defendant is the owner of a valid and subsisting oil and gas lease covering a portion of said real property; that the real property embraced by said oil and gas lease, and upon which the oil wells owned by this answering defendant are situate, is more particularly described as follows:

All of Lot 37 and the Southerly 103.1 feet of Lots 38, 39, 40 and 41, of Block 13, and the North 67.78 feet of Lots 1, 2, 3, 4, and 5, Block 14; all of Lots 7 and 8, and the East 45 feet of Lot 31; all of Lots 32, 33, and 34; the West 30 feet of Lot 35, and the East 30 feet of Lot 36; all in Block 13; all in Tract 9809, as per map recorded in Book 145, pages 91 et seq., of Maps, in the office of the County Recorder of Los Angeles County;

that the reasonable value of said leasehold interest of the defendant, as of September 28, 1943, the date of the taking of possession thereof by the plaintiff, was the sum of \$35,000 and that by reason of the taking of said property by plaintiff, this defendant has been damaged in the sum of \$35,000. This answering defendant further alleges that he is also the owner of certain overriding royalty interests entitling this defendant to receive 10 7/12% of the gross oil, gas and other hydrocarbon substances saved, produced and sold from the well, formerly known as "Colly Oil Well No. 1" and now known as "Block Well No. 10", situate on said real property hereinabove described; that the reasonable value of said royalty interest owned by this defendant as of said date was the sum of \$6,500; that by reason of the taking of said property by plaintiff, this defendant has been damaged in the sum of \$6,500. This answering defendant further alleges that he is also the owner of certain personal property and trade fixtures affixed to or used in connection [47] with the operation of said oil well known as Block Well No. 10 and located on said above described real property; that the reasonable value of said personal property and trade fixtures so owned by the defendant as of October 24, 1943, the date of a resolution of the Reconstruction Finance Corporation authorizing the taking of said property and mixed property, and as of the 12th day of January, 1944, the date of the filing of the Amended Complaint herein, was the sum of \$20,401.01, and that by reason of the taking of the

said property by plaintiff this defendant has been damaged in the sum of \$20,401.01.

Wherefore, defendant prays that he do have and recover the sum of \$61,901.01, together with such interest thereon as is allowed by law for the taking of said hereinabove described real property and the interests of this answering defendant therein, and for such other and further relief as the Court may grant.

RAPHAEL DECHTER

By /s/ B. L. HOYT

Attorney for answering Defendant [48]

United States of America,
Southern District of California,
Central Division—ss.

Sam Block being by me first duly sworn, deposes and says: that he is the defendant in the above entitled action; that he has read the foregoing Amended Answer of Sam Block and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

SAM BLOCK

Subscribed and sworn to before me this 25th day of June, 1945.

[Seal]

HARRY A. PINES

Notary Public in and for the County of Los Angeles, State of California

[Endorsed]: Filed June 29, 1945. [49]

In the District Court of the United States, in and
for the Southern District of California, Central
Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the Use
of RECONSTRUCTION FINANCE COR-
PORATION, a Federal Corporation, Acting
in Behalf of DEFENSE PLANT CORPORA-
TION, a Federal Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS
ANGELES, a Municipal Corporation, et al.,
Defendants.

JUDGMENT UPON THE VERDICT

(As to the Interest of the Defendant Sam Block)

The above entitled cause came on regularly for
trial before the above entitled Court, the Honorable
Campbell E. Beaumont, Judge presiding, on July
24, 1945, for determination and adjudication of the
just compensation to be paid by the United States
of America for the condemnation and taking of the
leasehold estate of the defendant Sam Block, in-
cluding all the production facilities and equipment
used in the operation of the producing oil and gas
well on said property, formerly known as Colly Oil
Well No. 1 and now known as Block Well No. 10,
as of September 28, 1942, as hereinafter set forth,

and the just compensation to be paid for the condemnation and taking of certain overriding royalty interests entitling the defendant Sam Block to receive 10 $\frac{7}{12}$ % of the gross oil, gas, and other hydrocarbon substances saved, produced, and sold from said leasehold estate, the plaintiff appearing by Eugene D. Williams, [66] Special Assistant to the Attorney General, and August Weymann and Arch G. McLay, Special Attorneys, Lands Division, Department of Justice, as its attorneys, and the defendant Sam Block appearing by and through his attorneys, Raphael Dechter and B. L. Hoyt.

A jury of twelve persons was regularly empanelled and sworn to try said action, and evidence, both oral and documentary, was introduced by and on behalf of the plaintiff and by and on behalf of the said defendant on the issues before the Court and jury; the case was argued and the jury instructed by the Court, and the cause thereafter submitted to the jury, and the jury thereupon rendered its verdict in the form and manner as follows, to wit:

“We, the Jury in the above-entitled case, find the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all the production facilities and equipment used on said date in the operation of the well, to be the sum of \$20,397.00.

“We further find the market value as of September 28, 1942, of the 10 $\frac{7}{12}$ per cent overriding royalty of the defendant Sam Block to be the sum of \$1,857.00.

“Total market value of the foregoing as of September 28, 1942, is \$22,254.00.

“Dated: Los Angeles, California, July 31, 1945.

“ALBERT E. WILSON

“Foreman of the Jury”

And it appearing that on October 26, 1942, pursuant to the provisions of Title 40, Sec. 258(a) U.S.C.A., the plaintiff filed herein its Declaration of Taking, which included the leasehold estate, together with the producing oil and gas well thereon, of the said defendant, and which are hereinafter more particularly described, and that concurrently with the filing of said Declaration of Taking plaintiff deposited in the Registry of this Court, as the estimated just compensation for the taking and condemnation of all of the property [67] in said Declaration of Taking described, and of which said leasehold estate constituted a part, the sum of \$740,469.00.

And it further appearing that at the time of the filing of the within action, to wit, September 28, 1942, and at the time of the filing of the Declaration of Taking aforesaid, the defendant Sam Block was the owner of the said leasehold estate, together with all the production facilities and equipment used on said date in the operation of the producing oil and gas well located thereon, and entitled to the compensation to be paid for the condemnation and taking thereof,

It Is, Therefore, Ordered, Adjudged and Decreed, as follows:

I.

That the plaintiff is ordered and directed to pay to the defendant Sam Block, as the just compensation for the condemnation and taking by the plaintiff, United States of America, of the leasehold estate of the defendant Sam Block, hereinafter more particularly described, including all of the production facilities and equipment used on September 28, 1942, in the operation of said well and on said date owned by the defendant Sam Block, the sum of \$20,397.00; and the plaintiff is further ordered and directed to pay to the defendant Sam Block, as the just compensation for the condemnation and taking by the plaintiff, United States of America, of the 10 7/12% overriding royalty owned by the defendant Sam Block on September 28, 1942, the further sum of \$1,857.00.

II.

That all right, title, interest, claim, and estate of any character whatsoever in, to, or under the oil and gas lease and subleases hereinafter described, together with all the production facilities and equipment located in or on Block Well No. 10 or used in connection therewith on September 28, 1942, are divested from and out of the defendant Sam Block, and an unencumbered title thereto and the whole thereof, and all interests therein, are vested in the United States of America, its successors or assigns; and all valid liens and claims of whatsoever nature

or description against the said real and personal property are transferred from said real and personal property to the [68] compensation herein adjudged to be paid to the defendant Sam Block, to the end that the United States of America will take an unencumbered title to all of said property, whether real or personal, free and discharged of all liens whatsoever.

III.

That the property affected by this judgment is located in the City of Los Angeles, County of Los Angeles, State of California, and is described as follows:

(a) An oil and gas sublease executed by H. G. Spengler as sublessor to Colly Oil Company as sublessee, dated March 8, 1935, recorded March 9, 1935, in Book 13343, at Page 46 of Official Records, Los Angeles County, and affecting all of Lots 7 and 8 and the Easterly 45 feet of Lot 31. All of Lots 32, 33, 34 and the Westerly 30 feet of Lot 35, and the Easterly 30 feet of Lot 36, all in Block 13 of Tract 9809.

(b) An oil and gas sublease made by H. G. Spengler as sublessor to Colly Oil Company as sublessee, dated February 26, 1935, recorded March 9, 1935, in Book 13329, at Page 93 of Official Records, affecting all of Lot 37 and the Southerly 103.1 feet of Lots 38, 39, 40 and 41 in Block 13, and the Northerly 67.78 feet of Lots 1, 2, 3, 4 and 5 of Block 14, all in Tract 9809.

(c) All the right, title, and interest acquired by

the defendant Sam Block under that certain assignment from H. G. Spengler as assignor to Colly Oil Company as assignee, dated July 20, 1935, recorded August 5, 1935, in Book 13618, at Page 10, of Official Records of Los Angeles County.

(d) All the personal property, production facilities, and equipment which, on September 28, 1942, were owned by the defendant Sam Block and which were located in or [69] upon the property affected by the above described oil and gas subleases, or either of them.

IV.

That the Court retains jurisdiction of this cause for the purpose of entering such further orders or decrees as may be necessary or proper in the premises, including the adjudication of the rights of any claimants in or to the compensation to be paid by the plaintiff in satisfaction of the awards herein made.

Dated: This 17th day of September, 1945.

C. E. BEAUMONT

United States District Judge

Presented by:

EUGENE D. WILLIAMS

Special Assistant to the At-
torney General

AUGUST WEYMANN

ARCH G. McLAY

Special Attorneys, Lands
Division, Department of
Justice

By A. WEYMANN

Attorneys for Plaintiff

Approved as to form:

By RAPHAEL DECHTER

Attorneys for Defendant Sam
Block

Judgment entered Sept. 17, 1945. Docketed Sept. 17, 1945. C. O. Book 34, Page 726. Edmund L. Smith, Clerk. By R. B. Clifton, Deputy.

[Endorsed]: Filed Sept. 17, 1945. [70]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

(As to the Interest of Defendant Sam Block)

Comes Now the plaintiff, United States of America, in the above entitled cause, and moves this Court for an order setting aside the verdict of the Jury heretofore rendered herein, vacating the judgment heretofore entered upon said verdict on September 17, 1945, and granting to plaintiff a new trial in the above entitled action as to the Judgment Upon the Verdict therein in favor of the defendant Sam Block, as to the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all of the production facilities and equipment used on said date in the operation of the oil well known as Block Well No. 10, upon the following grounds and for the following reasons, to wit:

1. Excessive damages appearing to have been given under the influence of passion or prejudice;

2. Insufficiency of the evidence to justify the verdict in the following particulars, to wit, that the evidence does not justify a finding of a fair market value of \$20,397.00 as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all of the production facilities and equipment used on said date in the operation of Block Well No. 10;

3. That the verdict is against law;

4. Error in law occurring at the trial and excepted to by the plaintiff in the following particulars, to wit:

(a) That defendant was permitted to introduce evidence of the market value of the production facilities and equipment used to produce Block Well No. 10 separately and in addition to the market value of said well through the use of said production facilities and equipment;

(b) In the refusal of the Court to strike out the testimony of the witnesses Block, Rubin and Rush as to the value of the oil well producing equipment and facilities used to produce Block Well No. 10 separately and apart from the valuation of said well as an operating unit.

This motion is made pursuant to the provisions of Section 657 of the Code of Civil Procedure of the State of California; Title 28, Section 391, U. S. Code, and Rule 59 of the Federal Rules of Civil

Procedure, in so far as said provisions of law and rules of procedure are applicable to condemnation proceedings prosecuted within the State of California; said motion will be based upon the pleadings and papers on file in this proceeding, the exhibits offered and received in evidence, the Minutes of the Court, and the official Court Reporter's transcript of the testimony upon the trial.

Dated: September 21, 1945.

EUGENE D. WILLIAMS

Special Assistant to the At-
torney General

AUGUST WEYMANN

Special Attorney, Lands Div.,
Dept. of Justice.

By EUGENE D. WILLIAMS

Attorneys for Plaintiff [72]

Receipt of a copy of the within Motion for a New Trial is hereby acknowledged, this 21st day of September, 1945.

RAPHAEL DECHTER

B. L. HOYT

By R. DECHTER

Attorneys for Defendant
Sam Block.

[Endorsed]: Filed Sept. 21, 1945. [73]

Beaumont

Los Angeles

TUESDAY, OCTOBER 2, 1945

Court convenes at 9 o'clock a.m.

Present: The Honorable Campbell E. Beaumont, District Judge; R. B. Clifton, Deputy Clerk; Sam Goldstein, Court Reporter.

[Title of Cause.]

This cause coming on for further hearing on motion of plaintiff, filed September 21, 1945, for a new trial as to interest of defendant Sam Block; August Weymann, Esq., Special Attorney, Lands Division, Dep't of Justice, appearing as counsel for the Government; Raphael Dechter and B. L. Hoyt, Esqs., appearing as counsel for Defendant Sam Block:

Attorney Weymann continues argument; Attorney Dechter argues; and Attorney Weymann argues further. The Court denies motion for a new trial.

[Title of District Court and Cause.]

MOTION TO MODIFY AND AMEND JUDGMENT ON VERDICT TO INCLUDE INTEREST ON AWARD

To the Plaintiff Above Named, and to Eugene D. Williams. Special Assistant to the Attorney General, and to August Weymann and Arch G. McLay, Special Attorneys, Lands Division, Department of Justice:

You and Each of You will please take notice that the defendant, Sam Block, will, on the 10th day of

December, 1945, before the Hon. Campbell E. Beaumont, Judge of the above entitled court, at the hour of 10:00 o'clock a.m., on or soon thereafter as counsel can be heard, move said Court to modify and amend the judgment upon the verdict heretofore signed and entered on the 17th day of September, 1945, so as to include interest on the amount of said award and verdict at the rate of 6% per annum from the 28th day of September, 1942, being the date of the seizure and taking of possession of the said defendant's property by the plaintiff, or from such other time [75] and upon such other sum as the Court may deem meet and just in the premises.

Said motion will be made upon the ground that the plaintiff did, pursuant to Sec. 258a, Title 40, U.S.C.A., deposit certain moneys with the registry of said Court to the use of the persons entitled thereto and that no allocation of any portion of said amount so deposited upon the taking of the properties of the defendant, Sam Block, in the above proceedings was made by the plaintiff upon said deposit, and upon the further ground that the plaintiff has refused to allocate or pay to said defendant for the taking of said property any sum in excess of \$7,500.00, and upon the further ground that a judgment upon the verdict has heretofore been entered on the 17th day of September, 1945, awarding said defendant, Sam Block, the sum of \$22,254.00 as and for the just compensation for the property of said defendant, Sam Block, taken by the plaintiff on said 28th day of September, 1942.

Said motion will be based upon said judgment, upon the verdict heretofore entered in and about the above entitled action, and upon the records, files and proceedings heretofore had in and about said above entitled action.

DECHTER, HOYT, PINES &
WALSH

By B. L. HOYT

Attorneys for Defendant Sam
Block

[Endorsed]: Filed Nov. 21, 1945. [76]

Los Angeles

Beaumont

WEDNESDAY, DECEMBER 19, 1945.

Court convenes at 1:45 o'clock p.m.

Present: The Honorable Campbell E. Beaumont, District Judge; R. B. Clifton, Deputy Clerk; Agnar Wahlberg, Court Reporter.

[Title of Cause.]

This cause coming on for hearing motion of defendant Sam Block to modify and amend judgment on verdict to include interest on award, pursuant to notice filed November 21, 1945; A. Weymann, Esq., Attorney, Lands Division, Department of Justice, appearing as counsel for the Government, states that counsel have agreed to submit motion. It is ordered that the said motion of defendant Sam Block to modify and amend judgment on verdict to include interest on award is denied. [78]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS FROM JUDGMENT

(As to the Interest of the Defendant Sam Block)

Notice is hereby given that the United States of America, the plaintiff above-named, appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment entered upon the Verdict in this action on September 17, 1945, in favor of the defendant Sam Block.

Dated: December 28, 1945.

/s/ EUGENE D. WILLIAMS

Special Assistant to the Attorney General, Attorney
for Plaintiff, United States of America

[Endorsed]: Filed Dec. 28, 1945. [79]

ORDER

Upon the annexed affidavit of August Weymann, verified January 22, 1946, and good cause appearing therefor,

It Is Ordered, that the time for the plaintiff to file its record on appeal herein be, and the same hereby is, extended to and including March 1, 1946.

Dated: This 22nd day of January, 1946.

C. E. BEAUMONT

United States District Judge

[Endorsed]: Filed Jan. 22, 1946. [80]

ORDER

Upon the annexed affidavit of August Weymann, Special Attorney, Lands Division, Department of Justice, and one of the attorneys of record for the plaintiff, the appellant herein, and good cause appearing therefor,

It Is Ordered, that the time for filing record on appeal herein under plaintiff's notice of appeal filed herein on December 28, 1945, be and the same hereby is extended to and including March 25, 1946.

Dated: This 28th day of February, 1946.

C. E. BEAUMONT,

United States District Judge

[Endorsed]: Filed March 1, 1946. [81]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL
FROM JUDGMENT ENTERED SEPTEMBER 17, 1945

In accordance with Rule 75 of the Federal Rules of Civil Procedure, the plaintiff, United States of America, hereby designates all of the following portions of the record, proceedings, and evidence in the case to be contained in the record on its appeal from the judgment entered herein September 17, 1945, in favor of the defendant Sam Block:

1. Original Complaint, omitting therefrom the names of all defendants except "Certain Parcels of Land in the City of Los Angeles, County of Los

Angeles, State of California; Doe One to Doe Two Thousand," and omitting Paragraph VIII thereof, [82] and omitting from Paragraph X thereof all parcel descriptions therein contained except the description of "Parcel 1." Filed September 28, 1942.

2. Order for Immediate Possession, omitting therefrom the description of all parcels therein contained except "Parcel 1." Filed September 28, 1942.

3. Declaration of Taking No. 1, omitting therefrom the descriptions of Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6, and Parcel 7, as set forth in Exhibit A attached thereto. Filed October 26, 1942.

4. Letter of Authority from Irl D. Brett to August Weyman. Filed December 3, 1943.

5. Letter of Authority from Francis Biddle, Attorney General, to Irl D. Brett and August Weymann. Filed April 27, 1944.

6. Substitution of Attorneys for the United States. Filed June 13, 1944.

7. Motion and Order for filing First Amended Complaint. Filed January 12, 1944.

8. First Amended Complaint, omitting from the caption thereof the names [83] of all defendants except Sam Block, and further omitting Paragraphs IV, V, and IX thereof, and omitting from Paragraph XI thereof, beginning on Page 16 to and including Page 115, all of the parcel descriptions except the parcel descriptions of Parcels 87 and

103, which appear, respectively, on Pages 44 and 51; and omitting Paragraph XII thereof, beginning on Page 115 to Page 130, inclusive. Filed January 12, 1944.

9. Title page, index page, and numbered pages 1 to 5, both inclusive, of Inventory of Property and Equipment. Filed January 20, 1944.

10. Amended Answer of Sam Block to First Amended Complaint. Filed June 29, 1945.

11. Judgment Upon the Verdict. Filed September 17, 1945.

12. Motion for a New Trial by plaintiff. Filed September 21, 1945.

13. Minute Order denying new trial. Filed October 2, 1945.

14. Motion of Defendant Block to Amend Judgment (omitting therefrom defendant's Points and Authorities endorsed thereon). Filed November 21, 1945.

15. Minute Order denying Motion of Defendant Sam Block to modify and amend Judgment. Filed December 19, 1945. [84]

16. Reporter's Transcript of Proceedings, all of Pages 1 to 481, both inclusive, being Volumes 1 to 6, inclusive, of the transcript.

17. Reporter's Transcript of Proceedings on Motion for a New Trial, October 1 and October 2, 1945, Pages 1 to 59, both inclusive.

18. Plaintiff's Exhibits 1 to 4, 5, 6, 7, 8, and 9, both inclusive, in evidence.

19. Defendant's Exhibit B in evidence.

20. Plaintiff's Exhibit 3 for identification.

21. Order Enlarging Time to File Record on Appeal. Filed January 22, 1946.

22. Order Enlarging Time to File Record on Appeal (No. 2). Filed March 1, 1946.

23. This designation.

Plaintiff and appellant will apply to the District Court for an order to send to the Appellate Court plaintiff's original Exhibits 6 and 9 in lieu of copies thereof. [85]

Annexed hereto and served with this designation is a statement of the points on which the plaintiff intends to rely on its appeal.

Dated: This 15th day of March, 1946.

/s/ EUGENE D. WILLIAMS,

Special Assistant to the Attorney General, Attorney
for Plaintiff and Appellant, United States of
America.

[Endorsed]: Filed March 20, 1946. [86]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH PLAINTIFF INTENDS TO RELY ON APPEAL FROM JUDGMENT IN FAVOR OF DEFENDANT SAM BLOCK, ENTERED SEPTEMBER 17, 1945.

I.

The District Court erred in admitting evidence of the market value of operating facilities and equipment on Block's Well No. 10, separate from the value of the well as an operating property.

II.

The District Court erred in admitting evidence of the market value of the operating facilities and equipment on Block's Well No. 10, as a separate element of value, apart from and in addition to the value of the well as an operating property. [87]

III.

The District Court erred in denying appellant's motion to strike and to instruct the jury to disregard, all testimony as to the market value, as of October 4, 1943, of any oil or gas production equipment and facilities, which on September 28, 1942, were located on the leasehold property of the defendant Block and were then used by him in the production of oil and gas from Block's Well No. 10.

IV.

The District Court erred in excluding from evi-

dence plaintiff's exhibit numbered 3 for identification.

V.

The verdict of the jury is not supported by the competent evidence.

VI.

The verdict of the jury is not supported by substantial evidence.

VII.

The District Court erred in denying appellant's motion for a new trial.

Dated: This 15th day of March, 1946.

/s/ EUGENE D. WILLIAMS,
Special Assistant to the Attorney General, Attorney
for Plaintiff and Appellant, United States of
America.

[Endorsed]: Filed Mar. 20, 1946. [88]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL,
BLOCK'S LEASE

It Is Hereby Stipulated and Agreed, by and between the attorneys for the plaintiff-appellant and the attorneys for the defendant-appellee Sam Block, that

1. Plaintiff's designation of the record on appeal

contains all of the records, proceedings and evidence in the case to be contained in the record on appeal;

2. That in lieu of the whole of plaintiff's Exhibit No. 7, only the paragraphs numbered 17 and 22 thereof need be certified to the Appellate Court for inclusion in the record;

3. That those portions of the record designated by plaintiff, which are deleted by blue pencil in the copies herewith delivered to the Clerk of the District Court, need not be certified to the Appellate Court [89] nor included in the printed record on appeal.

4. That the transcript of the record, as modified by this stipulation, and herewith delivered to the Clerk of the District Court, together with the reporter's transcript of the proceedings had in the District Court, as designated by the plaintiff, will constitute a true transcript of the record of the District Court on the appeal in the above entitled matter as agreed on by the parties; and the Clerk of the said District Court may so certify, including this stipulation as part of such record.

Dated: This 20th day of March, 1946.

/s/ EUGENE D. WILLIAMS,
Special Assistant to the Attorney General, Attorney
for Plaintiff-Appellant.

DECHTER, HOYT, PINES &
WALSH,

By /s/ B. L. HOYT,
Attorneys for Defendant Sam Block, Appellee.

[Endorsed]: Filed Mar. 20, 1946. [90]

[Title of District Court and Cause.]

AFFIDAVIT AND ORDER THEREON RE
SENDING ORIGINAL EXHIBITS TO
APPELLATE COURT ON APPEAL—
(BLOCK'S LEASE.)

State of California,
County of Los Angeles—ss.

August Weymann, being first duly sworn, deposes
and says:

That he is a Special Attorney in the Lands Division, Department of Justice, having immediate charge of the above entitled proceeding, and is familiar with the facts hereinafter set forth;

That plaintiff has taken an appeal from the Judgment Upon the Verdict to the Circuit Court of Appeals, Ninth Circuit, and has designated as part of the record to be certified to the Appellate Court plaintiff's Exhibits 6 and 9 in evidence on the trial of the case;

That plaintiff's Exhibit 6 is a large map of the area included in the condemnation proceeding, approximately 48x54 inches, showing the [91] subdivided area on which various oil leases, including that of the defendant Block, were located; that by reason of the size of this map, it is not practicable to have it reduced for printing in the record so as to make it legible;

That plaintiff's Exhibit 9 is a production graph showing the decline of production from the subject well, which was used and introduced for illustra-

tive purposes only; that only the original of this graph is in existence, and the same reasons which make the reproduction of plaintiff's Exhibit 6 in the printed record impracticable apply to it.

Wherefore, affiant prays an order of the Court, pursuant to Rule 75(i) of the Federal Rules of Civil Procedure, authorizing and directing the Clerk of this Court to transmit to the Clerk of the Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, the original plaintiff's Exhibits 6 and 9 in lieu of copies thereof with the record on appeal, with the request to the Clerk of said Circuit Court of Appeals to return the same to the Clerk of this Court after the disposition of the appeal.

A. WEYMANN.

Subscribed and sworn to before me this 19th day of March, 1946.

(Seal) ARCH G. McLAY,
Notary Public in and for Said County and State.
My commission expires: 11-27-49.

ORDER

Upon the foregoing affidavit of August Weyman, verified the 19th day of March, 1946, and good cause appearing therefor, it is so ordered.

Dated: This 19th day of March, 1946.

/s/ PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed Mar. 19, 1946.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 92 inclusive contain full, true and correct copies of Complaint in Condemnation as modified by stipulation of counsel; Order for Immediate Possession as modified by stipulation of counsel; Declaration of Taking No. 1 as modified by stipulation of counsel; Letters of Authority dated November 1, 1943 and March 31, 1944 respectively; Substitution of Attorney; Motion for Leave to File Amended Complaint and Order Thereon; First Amended Complaint as modified by stipulation of counsel; Title page, index page and pages numbered 1 to 5 inclusive of Inventory of Property and Equipment; Amended Answer of Sam Block; Plaintiff's Exhibits 1, 2, 3, 4, 5, Paragraphs 17 & 22 of Exhibit 7, and 8; Defendant's Exhibit B; Judgment upon the Verdict; Motion for a New Trial; Minute Order Entered October 2, 1945; Motion to Modify and Amend Judgment on Verdict to Include Interest on Award; Minute Order Entered December 19, 1945; Notice of Appeal; Two Orders Extending Time to File Record and Docket Appeal; Designation of Record on Appeal; Statement of Points on Appeal; Stipulation re Record

on Appeal and Affidavit and Order for Transmission of Exhibits which, together with Original Plaintiff's Exhibit 6 and 9, and copy of Reporter's Transcript, transmitted herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 22nd day of March, A. D. 1946.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Chief Deputy Clerk

In the District Court of the United States for
the Southern District of California, Central
Division

Honorable Campbell E. Beaumont, Judge Presiding (and jury).

No. 2454-B—Civil

UNITED STATES OF AMERICA, ETC.,
Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE
CITY OF LOS ANGELES, COUNTY OF
LOS ANGELES, STATE OF CALIFORNIA,
ETC., et al.,

Defendants.

REPORTERS' TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Tuesday, July 24, 1945

Appearances: For the Plaintiff: August Weymann, Esq., and Arch G. McLay, Esq., Special Attorneys, Lands Division, Department of Justice. For the Defendant Sam Block: Raphael Dechter, Esq., and B. L. Hoyt, Esq., 633 Subway Terminal Building, Los Angeles, 13, California. [1*]

The Court: Mr. Clifton, you may call the roll of the jury. It will not be necessary to have the

* Page numbering appearing at top of page of original Reporter's Transcript.

jury here today, but the roll of the jury should be called.

(The jury roll was called by the Clerk.)

The Court: All the members of this panel are ordered to report to the court room of Judge O'Connor. That is court room No. 7, as you know, down at the end of the hall. You are now excused to go to court room No. 7.

The witnesses may be excused until tomorrow, also, is that right?

Mr. Dechter: That is correct.

The Court: All the witnesses in this case are now excused. They will return tomorrow morning at 10:00 o'clock.

You gentlemen may now proceed. Mr. Weymann and Mr. Dechter, I don't care which one of you proceeds to argue upon this question.

Mr. Dechter: I really feel, your Honor, that on this point the burden is on the government to show their authorization or right to take this property, and as of what date that right was secured.

Mr. Weymann: The property to be valued by the jury here consists of an oil and gas sublease owned by the defendant Block with one operating well on it. The position of the [2] government is this, that when the authorization to take this land was made by a resolution of the Reconstruction Finance Corporation pursuant to which this action was instituted, that authorization included all of the trade fixtures which constituted the operating equipment of the oil well on that lease.

The Court: Mr. Weymann, do you have that resolution, a copy of it, with you?

Mr. Weymann: I have the original resolution of September 18, 1942, and I have the resolution of the 19th of October, 1942 authorizing the filing of the declaration of taking, and I have a copy of the declaration of taking. Would the court wish these to be introduced in evidence?

The Court: I think it would probably be inadvisable to do it now. At least, it is unnecessary to do so. This is just a question of law, and if you submit them to the court or read the parts that are material, I think that will be sufficient.

Mr. Dechter: May I be heard on that?

The Court: Yes.

Mr. Dechter: With all due deference to the court's statement, I feel that in view of the fact that this is a point of law which your Honor has to decide that is based somewhat on the factual points, and those factual points are contained in those resolutions, I think it would be proper to have [3] them received as an exhibit. In other words, as I understand it——

The Court: I have no objection one way or the other, as long as that is the desire of the parties. They may either be marked for identification or be received in evidence.

Mr. Dechter: The reason I say that is I presume the court will make findings of fact as to these points of law. In other words, there will be findings of facts and conclusions, part of which will involve the jury.

The Court: This is only a matter of argument upon the question of law. All of the proceedings, of course, must take place after the trial has begun, and whatever determination the court makes must be made in the course of the trial. Now, is it your desire that it be considered that the trial has begun in the absence of the jury and these be marked for evidence? They can't be received in evidence unless the proceedings have actually begun.

Mr. Dechter: I am willing to stipulate the proceedings have begun and your Honor is trying that part of the case which is the court's province to decide. In other words, this is a point that the jury has no concern with.

The Court: My thought was the argument would simply be made and the court would announce its decision at the proper time after these may have been received in evidence. But either way is satisfactory to the court, whatever the parties agree upon. [4]

Mr. Dechter: I would prefer it that way.

Mr. Weymann: May I suggest then that we offer these for identification?

The Court: Well, it may be either way.

Mr. Weymann: I offer as Plaintiff's Exhibit 1, Resolution of the Reconstruction Finance Corporation adopted September 18, 1942.

The Court: Will you read that offer, please?

(The offer was read.)

The Court: Let it be marked as Plaintiff's Exhibit 1 for identification.

(Whereupon, the document referred to was

marked Plaintiff's Exhibit No. 1, for identification.)

The Court: Your offer for identification assumes that the trial has begun in the absence of the jury?

Mr. Weymann: That is correct, your Honor.

The Court: And that is your understanding as well?

Mr. Dechter: So stipulated, and I have no objection to its being received in evidence.

The Court: Well, it has been offered for identification and ordered marked for identification.

Mr. Weymann: I now offer as Plaintiff's Exhibit 2, Resolution of the Board of Directors of the Reconstruction Finance Corporation, adopted the 19th of October, 1942.

The Court: You are offering that it be received and the offer was offered for identification?

(Whereupon, the document referred to was marked as Plaintiff's Exhibit 2 and received in evidence.) [5]

PLAINTIFF'S EXHIBIT No. 2

AMENDATORY RESOLUTION

Whereas, this Corporation at the request of Defense Plant Corporation has caused condemnation proceedings to be instituted in the name of the United States pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public law 507, 77th Congress) and Executive Order 9217, for the purpose of obtaining possession of the lands described in the attached Exhibit "A",

for use as a storage reservoir for natural gas (Playa del Rey Natural Gas Storage Project, Plancor 1406); and

Whereas, Defense Plant Corporation has requested this Corporation to arrange for the filing of a Declaration of Taking in the Condemnation proceedings in order that title to said lands may vest in the United States at the earliest possible time;

Resolved, that the Resolution adopted by the Board of Directors of this Corporation on September 18, 1942 be amended by adding thereto the following Resolved Fourth, Resolved Fifth and Resolved Sixth:

“Resolved Fourth: It is necessary and advantageous in carrying out the authority vested in Defense Plant Corporation to acquire by condemnation the land described in Exhibit ‘A’.

“Resolved Fifth: The Treasurer or Assistant Treasurer and the Secretary or Assistant Secretary of this Corporation be, and hereby are, authorized and directed to execute under the seal of this Corporation a Declaration of Taking covering the land described in Exhibit ‘A’ in form and substance satisfactory to General Counsel or an Assistant General Counsel of this Corporation and to arrange for the delivery of such Declaration of Taking to the Attorney General of the United States for appropriate action.

“Resolved Sixth: Just Compensation for the

land described in Exhibit 'A' is estimated to be Seven Hundred Forty Thousand Four Hundred Sixty-nine Dollars (\$740,469)."

* * * *

The foregoing Resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 19th day of October, 1942.

[Seal] LEO NIELSON

Assistant Secretary Reconstruction Finance Corporation

Mr. Weymann: The Plaintiff's Declaration of Taking No. 1 of course is on file with the court. I think it is in Volume 1 of these proceedings.

The Court: Well, I haven't read it, Mr. Weymann.

Mr. Weymann: Then, I will submit to the court for its convenience a copy of it.

The Court: I would like to have a copy.

Mr. Dechter: Will you have additional copies? I have a copy of the resolution, but not of the other.

Mr. Weymann: Yes.

The Court: You may proceed.

Mr. Weymann: I am just submitting to Mr. Dechter a document for his inspection. I offer as Plaintiff's exhibit next in order a telegram from Leo Nielson, Assistant Secretary of the Reconstruction Finance Corporation, to Eugene D. Williams, Special Assistant to the Attorney General, telegram being dated March 26, 1945.

Mr. Dechter: To which we will object, your

Honor, on the ground that it is incompetent, irrelevant, immaterial, being a self-serving declaration and attempting to usurp the province of the court in construing the legal steps theretofore taken by the plaintiff and trying to cast plaintiff's own construction on those legal steps which it is the duty of this court to determine in this matter.

The Court: May I see it? [6]

Mr. Weymann, the court is inclined to sustain that objection. It sounds as though it is properly based, but I would like to hear from you.

Mr. Weymann: The matter which the court is now called upon to pass upon is to determine what the Reconstruction Finance Corporation really did when it authorized the bringing of this action. That is not a self-serving declaration, but it is an explanation of what Reconstruction Finance Corporation meant by what it did. In other words, it is an interpretation, or rather a statement of what the Reconstruction Finance Corporation had in mind when it passed those resolutions.

The Court: I think the objection is good. It says here particularly that certain proceedings have been properly construed by justice as an adoption and ratification. It may be marked for identification.

Mr. Weymann: Thank you. May I have an exception?

The Court: Yes.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 3, for identification.)

PLAINTIFF'S EXHIBIT No. 3
(For Identification)

Received Mar. 26, 1945. Lands Division, Los Angeles, California.

GA

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WUX Washington DC Mar 26 1250P 1945

Eugene D Williams

Special Asst to Attorney General

Re Playa Del Rey Gas Storage Project. Amendatory Resolution Adopted by Directors Reconstruction Finance Corporation October 4 1943 Authorizing Amendment to Petition in Condemnation Proceedings Number 2454-B Civil to Include Certain Items of Property Designated As Personal Property Located on Lands Covered in Declaration of Taking Filed in Said Proceedings Has Been Properly Construed by Justice As An Adoption and Ratification of Act of Defense Plant Corporation in Taking Possession on September 28, 1942 of Property Listed in Exhibit C of Amended Petition in Condemnation in Connection with Taking Possession of Land Covered by Such Declaration of Taking. At Time Declaration of Taking Was Filed Necessity for Taking Some of Items Described in Said Exhibit C Could Not Be Determined As Defense Plant Corporation Had No Way of Knowing What Items of Property Were Located on Site or Would Be Required in Connection with Operation of Project, and Some of Items Included

in Exhibit C, including Oil Drilling Equipment, Were Thought to Be Part of Realty So As to Have Been Acquired Upon Filing of Declaration of Taking. Reconstruction Finance Corporation Did Not Delete Any of Items in Inventory Furnished by Representatives of Defense Plant Corporation, Which Inventory Was a List of All Property Known to Be on Lands Taken Except Certain Items of Property Which Were Determined Prior to Adoption Amendatory Resolution of October 4, 1943 Not to Be Required in Connection with Project and with Respect to Which Arrangements Had Been Made for Release to Former Owners

LEO NIELSON

Asst Secretary

4 1943 2454-B 28 1942 C 4 1943

1023AM . .

RCD SN 74 TNX

Mr. Weymann: I offer in evidence as next in order a letter from the Attorney General to Mr. Irl D. Brett, dated September 22, 1942, enclosing a certified copy of a letter from the Assistant Secretary of the Reconstruction Finance Corporation dated September 19, 1942. [7]

The Court: It may be received in evidence.

Mr. Dechter: May I see it, your Honor? I have not seen it before.

The Court: Oh, yes. The court will withhold its ruling.

Mr. Dechter: All right. I have examined it.

The Court: It may be received and marked as Plaintiff's Exhibit 4.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 4, and received in evidence.)

PLAINTIFF'S EXHIBIT No. 4

Received Sept. 24, 1942. Lands Division, Los Angeles, California.

RJL-ICH 33-5-882

Department of Justice
Washington, D. C.

September 22, 1942

Air Mail

Mr. Irl D. Brett

Special Assistant to the Attorney General

Federal Building

Los Angeles, California

Dear Mr. Brett:

There are enclosed certified copy of a letter dated September 19, 1942, from Leo Neilson, Assistant Secretary, Reconstruction Finance Corporation, to the Attorney General, requesting that a proceeding be instituted to acquire by condemnation certain land in the City of Los Angeles, State of California, for use in connection with the establishment of a reservoir for the storing and conservation of natural gas, four copies of Exhibit A, and two plats.

Kindly prepare a petition and related papers and

institute a proceeding pursuant to the Second War Powers Act, Public Law 507, 77th Congress, approved March 27, 1942, and obtain from the court an order granting to the Government the right of immediate possession. Please forward to the Department certified and uncertified copies of the complaint and order and notify the Department by wire of the date when the Government has the right of possession.

Please notice that the estate being acquired is in fee simple, subject to existing easements for public utilities.

Arrangements have been made by the War Department for the procurement of title evidence and same will be made available to you.

Respectfully,

For the Attorney General

/s/ J. EDWARD WILLIAMS

Acting Head, Lands Division

Enclosure No. 602918

RECONSTRUCTION FINANCE
CORPORATION

Washington

September 19, 1942

The Honorable Francis Biddle
Attorney General of the United States
Washington, D. C.

Dear Sir:

In connection with the establishment of a reser-

voir for the storing and conservation of natural gas (Playa Del Rey Natural Gas Storage Project, Plancor 1406) by Defense Plant Corporation, a corporation created pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, to relieve a shortage of gas which would impede the war effort, this Corporation has determined that it is necessary for war purposes to acquire certain lands situated in the City of Los Angeles, State of California.

Therefore, pursuant to the provisions contained in the Act of Congress approved January 22, 1932 (15 U. S. C. 601-617) as amended, and Public Law 507, 77th Congress approved March 27, 1942, and Executive Order 9217 issued by the President of the United States on August 7, 1942, by virtue of and pursuant to authority vested in him by Title II of the Second War Powers Act 1942, approved March 27, 1942 (Public Law 507, 77th Congress) authorizing Reconstruction Finance Corporation to acquire and dispose of property deemed necessary for military, naval or other war purposes, it is requested that you cause the necessary proceedings to be instituted for the acquisition of the lands described in the enclosed Exhibit "A." The estate to be acquired is the full fee simple title subject to existing easements for public utilities.

You are advised that it is vital to the successful prosecution of the war that the United States be granted the immediate right to occupy, use and improve the lands described in Exhibit "A". It

is, therefore, requested that you cause the necessary action to be taken to procure an order from the court granting the United States the immediate right to occupy, use and improve said lands pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217.

Arrangements have been made for the procurement of title evidence covering the lands to be condemned. Such title evidence will be made available to the United States Attorney.

There are enclosed three copies of a description of the lands to be condemned entitled Exhibit "A" and three copies of a plat showing the location of said lands to be condemned.

Very truly yours,

.....

Assistant Secretary

Enclosures

WJR:ebs

Pursuant to T. 28 U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

[Seal]

J. EDWARD WILLIAMS

Acting Head, Lands Division
Department of Justice

Mr. Weymann: I offer as Plaintiff's exhibit next in order letter from the Attorney General to

Mr. Irl D. Brett, dated October 24, 1942, to which is attached a certified copy of a letter dated October 22, 1942, to the Attorney General from M. C. Mulligan, Assistant Secretary of the Reconstruction Finance Corporation. [8]

The Court: It may be received and marked as Plaintiff's Exhibit 5.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 5, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 5

Address Reply to "The Attorney General" and Refer to Initials and Number

RJL-ICH 33-5-882

Department of Justice
Washington, D. C.

October 24, 1942

Received Oct. 26, 1942 Lands Division Los Angeles, California

Air Mail

Mr. Irl D. Brett

Special Assistant to the Attorney General

Federal Building

Los Angeles, California

Dear Mr. Brett:

There are enclosed copy of letter dated October 22, 1942, from M. C. Mulligan, Assistant Secretary of Reconstruction Finance Corporation, to the

Attorney General, requesting that declaration of taking No. 1 be filed in the condemnation proceeding entitled United States of America for use of Reconstruction Finance Corporation, et al., vs. Certain Parcels of Land in the City and County of Los Angeles, State of California, and County of Los Angeles, et al., and four copies of declaration of taking No. 1. A check in the sum of \$740,469.00, payable to the Clerk of the District Court of the United States in and for the Southern District of California, will be made available by Defense Plant Corporation at Los Angeles, California, as estimated compensation for the land.

Kindly file the declaration of taking in the above proceeding, enter an order thereon, and deposit the check into the registry of the court. Then forward to the Department certified and uncertified copies of the pleadings and advise the Department by wire the date when the above papers are filed and the date when possession is available to the Government.

Arrangements have been made by the Reconstruction Finance Corporation for the procurement of title evidence.

Respectfully,

For the Attorney General

/s/ NORMAN M. LITTELL

Assistant Attorney General

Enclosure No. 602407

October 22, 1942

Honorable Francis J. Biddle
Attorney General of the United States
Department of Justice
Washington, D. C.

Re: Playa Del Rey Natural
Gas Storage
Plancor 1406

Dear Sir:

In connection with the establishment of a storage reservoir for natural gas by Defense Plant Corporation, a corporation created pursuant to Section 5d of the Reconstruction Finance Corporation Act as amended, this Corporation has determined that it is necessary and in the interest of the United States to acquire by judicial proceedings certain lands situated in Los Angeles County, State of California. The lands and estate to be taken are more particularly described in the Declaration of Taking, the original and four copies of which are enclosed.

There is urgent need for the acquisition of title to this land and it is desired that the enclosed Declaration of Taking be filed with the least possible delay.

A check in the amount of \$740,469.00, payable to the Clerk of the District Court of the United States in and for the Southern District of California, Central Division, representing the sum of money estimated to be just compensation for the land to be taken, will be made available by Defense

Plant Corporation acting through its agent, the Manager of the Loan Agency of Reconstruction Finance Corporation at Los Angeles, California. Arrangements have been made for the procurement of title evidence covering the lands to be taken.

Very truly yours,

[Seal] /s/ M. C. MULLIGAN

Assistant Secretary

Pursuant to T. 28 U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

NORMAN M. LITTELL

Assistant Attorney General Lands Division, Department of Justice

Enclosures.

Mr. Weymann: If the court please, may we proceed?

The Court: Yes.

Mr. Weymann: The position of the government is this, that under the original authorization, resolution of September 18, 1942, authorizing the bringing of this proceeding for the condemnation of certain property, all of the trade fixtures, all of the improvements thereon, were included in that authorization and were attached to the land at that time. In support of that contention I wish to cite to your Honor the following cases: *City of Los Angeles v. Klinker*, 219 Cal., page 199.

The Court: 199?

Mr. Weymann: 219 Cal., page 199. United States v. Seagren, 50 Fed. (2d) 333. That was a District of Columbia case.

Bell v. Bank of Perris, a California case, 125 Pac. (2d) 829.

The Court: Don't you have the California citation?

Mr. Weymann: I will get the California citation.

Mr. Dechter: May I have that citation, please?

Mr. Weymann: 125 Pac. (2d) 829. I will get the California [9] citation.

San Diego Trust & Savings Bank v. San Diego, 16 Cal. (2d) 145. In re: Allen Street, 256 New York, 236.

The facts in the Seagren case, which is a case arising in the District of Columbia, which was a condemnation proceedings, Seagren was a lessee of certain property described as a vacant lot. The lease gave the tenant authority to erect buildings and implant tanks and other structures and to take away and remove the said buildings and structures at the termination of the lease. In other words, it was a filling station. The question arose as to whether the private stipulations for removal between the land owner and the tenant inured to the benefit of the government when condemning the estate of both.

We are condemning the estate of both the landlord and the tenant here, but the valuation of the tenant's property is only under consideration.

The court there said this. It is a short opinion if I may read that:

“We find the controlling rule well stated in Nichols on Eminent Domain: ‘It frequently happens that, in the case of a lease for a long term of years, the tenant erects buildings upon the leased lands or puts fixtures into the building for his own use. It is well settled that, even if the [10] buildings or fixtures are attached to the real estate and would pass with a conveyance of the land, as between landlord and tenant they may remain personal property, and, in the absence of special agreement to the contrary, may be removed by the tenant at any time during the continuation of the lease provided such removal may be made without injury to the freehold. This rule is however entirely for the protection of the tenant and cannot be invoked by the condemning party. If the buildings or fixtures are attached to the real estate, they must be treated as real estate in determining the total award, but in apportioning the award they are treated as personal property and credited to the tenant.’ ”

The Court: I didn’t hear the very last.

Mr. Weymann: “* * * but in apportioning the award they are treated as personal property and credited to the tenant.’ ”

“And the New York courts have frequently considered the question, and stated the rule very precisely: As the property now exists, it is real property, and so remains until the structure is severed from the soil. This act the tenant is not

bound to perform at the time the property is taken. As it [11] then is, so it may always remain; and, when the city makes the compensation for the property, it steps into all the rights possessed by both parties. * * *''

Now, the contention is made here that as between the lessor and lessee the lessee may remove such of the operating equipment as he may salvage. That is true upon the abandonment of the well. When he removes his operating equipment he abandons the well, consequently there can be no value or valuation of that property as a producing oil well. The valuation to be determined in this proceeding is the valuation of a producing property. That carries with it all of the incidentals, everything necessary to make it a producing property.

If the improvements which go with it are to be valued separately, then all the value that remains is that of a potential oil land, not as a producing property. But what the government took was a producing property.

The court in the case of *City of Los Angeles v. Klinker* cited a case——

The Court: Did you give that citation? Is that K-l-i-n-k-e-r?

Mr. Weymann: K-l-i-n-k-e-r. That pertained to the condemnation of the building and printing machinery of the Times Mirror Company, and the court there cited an Indiana Appeals case, *White v. Cincinnati, etc. Railroad*, 34 Ind. App. [12] 287 (71 N. E. 276), in which the machinery of a paper

mill was held to be part of the realty. The court there said:

“It is clear from the record that the improvement upon the real estate consists not simply of certain buildings containing various pieces of machinery, but of a paper mill—a thing complete within itself.”

In this case it consists not merely of a derrick, tanks and so forth, but a complete operating unit.

“One machine essential in the manufacture of paper might be so annexed to or constitute such part of a building that it could not be removed, and another machine equally essential might be easily removed, and yet, when the two machines are separated, each is without value for the uses intended.”

In this instance we have a well and we have the leased ground which is oil-bearing. The ground is useless without the well to produce it, and the producing equipment is useless without oil-bearing sands.

“As the machinery is permanent in its character,—” as in this case it is permanent so far and lasts as long as the property interests which this defendant has.

“—and, being essential to the purpose for which the buildings are used, is a fixture, it must be [13] regarded as realty, and goes with the buildings. The land, waterpower, buildings, and machinery constitute a paper mill plant—a unit. It has or has not a value as such, just as a building is valued,

not by fixing a value on the different materials composing it, but as a building."

That seemed such a clear-cut case. And then the Bank of Perris, which I have cited to your Honor and which I will get the California citation.

The Court: The Bank of Perris, is it?

Mr. Weymann: P-e-r-r-i-s.

The Court: Bank of Perris v. whom?

Mr. Weymann: Bell v. Bank of Perris. There the California court held that a pumping plant for a water well was part of the realty.

The San Diego Trust & Savings Bank case was one of the bank vault door cases. It was there contended that as the vault doors were removable they remained personal property. The court held that the doors were part of the realty even though they could be removed without material damage, saying:

"It is sufficient if the article shall appear to be intended to remain when fastened until worn out, until the purpose to which the realty is devoted has been accomplished or until the article is superseded by another article more suitable for [14] the purpose."

That is precisely the situation we have here: The operating equipment is intended to be used in connection with land.

The Court: When you speak of operating equipment, that might include many items. Now, here in this San Diego case, the door was actually a part of a vault, and there it was held to be properly condemned when the realty was condemned.

I would like a little more clarification as to what type of property we are likely to have here, Mr. Weymann.

Mr. Weymann: We have the casing, tubing——

The Court: Well, the casing, that is attached in the well?

Mr. Weymann: Yes, it is attached in the well. The tubing——

The Court: The tubing, likewise?

Mr. Weymann: Sucker rods, pump, derrick, tanks, and fittings.

The Court: Well, fittings were part of the machinery that was attached to the well?

Mr. Weymann: That is correct.

The Court: No loose personal property?

Mr. Weymann: Nothing on the rack or nothing in the warehouse. Is that correct?

Mr. Dechter: I don't agree with you on that.

Mr. Weymann: That, of course, is subject to correction. Our information is that all of this material is used in connection with the operating well.

The Court: When you say "used in connection with" there might be some wrenches or something of that kind that were used in connection with the operation of the well, but they can be used in connection with the operation of any well and would not be attached in any way to any of the fixtures. You don't mean anything of that kind?

Mr. Weymann: No, I don't mean anything of that kind. And if there are any such items that are not part of the operating unit, we are perfectly

willing to stipulate they may be considered outside of this acquisition.

So, it is our position, then, that under the original authorization the operating unit was condemned, taken into possession by the government on September 28, 1942.

Now, there is just one further point— [16]

The Court: Before you leave that, Mr. Weymann, I want to ask you this question. You said if there are other items which are not included in those that you have mentioned, they may be considered as outside of the case.

Mr. Weymann: Outside of the taking as of September 28, 1942.

The Court: Yes. Well, now, suppose they were taken. Suppose there were some and that they were taken. There seems to be some disagreement on that point, but they would be unlawfully taken?

Mr. Weymann: That brings me to my second point.

The Court: Then, I am sorry I interrupted you. Go ahead.

Mr. Weymann: My second point is this. That which the Reconstruction Finance Corporation could originally authorize, it could subsequently ratify, and that if the taking on September 28, 1942, was and had its inception unlawfully, it was ratified by the subsequent action of the Reconstruction Finance Corporation, and the filing of the amended complaint pursuant to that subsequent ratification relates back to the date of the original taking as of that time.

The Court: Well, what did Judge McCormick hold in that respect?

Mr. Weymann: I may explain this, your Honor. The situation with the Treasure Company is not the same as the situation here because there, drilling equipment which was on [17] the ground and which was not used in relation to any well whatever, was taken into possession.

The Treasure Company sued the Union Oil Company, alleging that the taking was invalid and unlawful. The Government asked for an order enjoining the prosecution of the State Court action and Judge McCormick denied that petition.

The Court: Well, he held, did he not, and I am not so sure, but I am just asking for information—perhaps I should put it this way. Did he hold that there was no relation there?

Mr. Weymann: I don't so construe it, but in any event the equipment which was there under consideration was not pumping equipment, but it was drilling equipment.

The Court: Well, now, just right there I believe we get back to the question the court asked. If there is any personal property which was unattached in any way, but which was lying there on the ground or in the sheds, then that would come within the scope of Judge McCormick's ruling?

Mr. Weymann: I think so.

The Court: That is, it would be similar to the Treasure Company?

Mr. Weymann: That is right.

The Court: Of course, then, there is a question

of fact whether or not there was any such. Your position is that there was not, and Mr. Dechter's is that apparently there [18] was some.

Mr. Weymann: I am not prepared to say that there may not have been a few wrenches or odd miscellaneous items lying around, because it is difficult in inventorying a huge mass of material.

The Court: Then, suppose that they were taken? Then the taking would not have been under the authorization?

Mr. Weymann: That is correct. It would be tortious taking.

The Court: And what about the determination of their value?

Mr. Weymann: Well, if it was a taking without any authorization whatever, then I don't believe it would be triable in this proceeding, this being a condemnation proceeding and the value would have to be determined by claim filed under the Tucker Act if there was no authorization for the taking.

The Court: You have finished your presentation, Mr. Weymann?

Mr. Weymann: Yes, sir.

The Court: Mr. Dechter?

Mr. Dechter: Before I proceed to reply to Mr. Weymann, I would like to ask for a stipulation that under the sub-lease dated February 26, 1935, from Mr. Spangler, the original lessee, to the Colly Oil Company, sub-lessee, which is recorded in Book No. 13329, page 93, of the official records [19] of the County Recorder of Los Angeles County, that

there is a provision in Paragraph 9 giving the sub-lessee the right to remove personal property and equipment placed on the premises described in said lease at any time during the term of said lease and within 30 days after termination of said lease.

Mr. Weymann: I don't know if I can stipulate as to those terms, Mr. Dechter. My abstract reads, "Upon the termination of the lease."

Mr. Dechter: Paragraph 9 says, "up to within 30 days of termination, at the termination, or within 30 days."

Mr. Weymann: Up to any time within 30 days after termination of the lease. But not any time during the term of the lease.

Mr. Dechter: That is right.

Mr. Weymann: I will so stipulate that the equipment as between lessor and lessee and the sub-lessor and the sub-lessee, the equipment placed upon the lease may be removed at the termination of the lease or any time within 30 days thereafter.

Mr. Dechter: Well, I will ask permission for the purpose of this argument, your Honor, to offer a certified copy of that sub-lease. I called Mr. Weymann and asked him if it would be necessary.

The Court: Well, you seem to be in some disagreement on that, and perhaps you had better have it. [20]

Mr. Dechter: Now, I will ask Mr. Weymann if he will stipulate to the base lease as to the form, Mr. Comstock as receiver, that the U. S. Building & Loan Association to Mr. Spangler, which is reported in Book 13157, Page 165, that that base leaf

reflects almost at the very beginning of the lease where it grants the right to explore and develop for oil, and it has this language:

“With the right to remove during or after the term any and all improvements placed or erected on the premises by lessee, including the right to pull all casings.” That is on the first page of the lease.

Mr. Weymann: So stipulated that that is included in the original lease.

Mr. Dechter: And it is my contention that the certified copy of the sub-lease, your Honor, will show that the sub-lessee had the right to remove at any time during the term and up to within 30 days after termination.

The Court: Very well. You will have that here this afternoon?

Mr. Dechter: Yes. Well, I will order it. I might not have it until tomorrow morning.

The Court: Then, I think it would be well to have someone from your office go over and copy off that portion and just bring it here so that the court may have it. That may be important. [21]

Mr. Dechter: I am willing to go with Mr. Weymann right to the Recorder's office. It will only take about ten minutes. We can agree on it.

Mr. Weymann: If that is what it is, we will so stipulate, but my abstract——

The Court: There is no criticism of your not stipulating.

Mr. Weymann: I understand.

The Court: But what I want to do is have it before tomorrow morning.

Mr. Dechter: In other words, your Honor, we will leave from here this noon, Mr. Weymann and I, and go right to the Recorder's office.

The Court: Very well. I didn't even intend that you should have Mr. Weymann go with you. Just have some one from your office copy that particular phrase, but if the two of you go, it will be that much better.

Mr. Dechter: If your Honor will examine the resolution which is Plaintiff's Exhibit 1 and which is a pre-requisite for this proceeding; that is, the resolution of the Reconstruction Finance Corporation authorizing the Defense Plant Corporation to acquire certain lands for gas storage project, the first recital is:

"Whereas Defense Plant Corporation has been unable to acquire title to the lands required for said storage [22] reservoir," which lands are described in Exhibit A, and the resolution resolved first, in the next to the last paragraph on page 1:

"It is necessary for war purposes that the lands described in Exhibit A be acquired by condemnation proceedings, and in connection therewith that the immediate right to occupy, use and improve such lands be granted."

Now, the same issue, your Honor, was involved before Judge McCormick, and it is my understanding that the personal property involved in the Treasure Oil Company included property exactly the same as that here, but the point is, as your Honor asked Mr. Weymann, did the resolution of October of 1943, Plaintiff's Exhibit 2, have the ef-

fect of ratifying or having a retroactive effect so that it would date from September 18, 1942, the date of the first resolution, to include personal property or include anything else except lands?

Judge McCormick wrote a 12-page opinion on the matter, and taking the highlights of that opinion—I have an extra copy if your Honor would like to have it.

The Court: Yes, I would like to have it. I have it in my chambers, but if you have one here, I will look at it.

Mr. Dechter: On page 2, line 11, Judge McCormick says:

“Neither the letter of authority authorizing the institution of the action, the complaint in condemnation, nor the order for possession provided for the condemnation [23] or acquisition of personal property. These instruments all specifically called for the condemnation of land only.

“Notwithstanding the limitations of the order for possession, the seizure made by the Government on September 28, 1942, included personal property, as well as real property.”

On page 3 it states further:

“On November 24, 1943, an admittedly ineffectual amendment to the complaint in condemnation was filed in this court. Later, on January 12, 1944, an authorized amendment to the complaint in condemnation was filed herein. This pleading specified as within the scope of the condemnation proceeding the personal property which is the bone of contention in the proceedings before the court.”

Then, on page 9, line 28:

“While it is probably true under the broad powers reposed by Congress in the Executive by Title II of the Second War Powers Act that the personal property involved in this controversy might have been acquisitioned with the land or acquired as incidental thereto, the record evidence before us clearly proves that no such situation existed. As previously adverted to, all of the memorials, instruments of authority and pleadings leading up to and [24] accompanying the acquisition by the plaintiff pertain to land, and only to land. Nor is there any indication in the resolutions of the acquiring agency of September 19, 1942, and October 19, 1942, that evince any intention to acquire the personal property in dispute as part of the natural gas storage facility sought through the condemnation proceedings instituted in this court.

“The fair preponderance of the evidence before us establishes, we think, that the present claim that it was the intention from the inception of the project to acquire the personalty is an afterthought conceived to avoid possible consequence of the seizure of September 28, 1942.

“There can be no serious claim of ratification by plaintiff of the seizure of the personalty because before any adequate manifestation by plaintiff of an intention to acquire such property was evident, the State Court had already acquired jurisdiction of the res.”

On the same page 10, line 31:

“One of the jurisdictional essentials of a pro-

ceeding in condemnation of the judicial type is that the property sought to be taken shall be described in the petition (complaint).

“It is clearly established by the record before us that no specification whatever of any personalty was [25] made in any of the proceedings until the month of October, 1943, when for the first time an authorization to amend the pleadings so as to include personal property was given, and it was not until the following January that the amended complaint directed to the acquisition of the personal property in issue was filed.

“Thus we find that the earliest effectual and authorized acquiring of the personal property by the Government was subsequent to the acquiring of jurisdiction over the same res by the State Court in the recovery actions pending therein.”

Now, if we look at the first time any personal property involved was particularly described, your Honor, it was when the last amended complaint was filed, and accompanying that complaint as an exhibit was this inventory of the property and equipment, and it completes the personal property of my client on which we are claiming separate valuations.

Now, under Mr. Weymann's theory that this would pass with the land, it would mean that if a purchaser of the land was buying this land from the owner of the land, that he would acquire this particular personal property. Now, it is my contention that this particular property described in the inventory as an exhibit to the complaint would

not have passed in an ordinary sale between vendor and vendee, and your Honor knows that in these condemnation cases the courts have held [26] including the United States Supreme Court, that the Government is in the position of the buyer and the owner of the property condemned in the position of an involuntary seller, but the rights and position of vendor and vendee are also to govern as to the particular interest sought to be acquired.

Now, it is my contention that even without the provision in the lease giving the right of removal, that under the law of trade fixtures, that this would be considered personal property. As your Honor knows, trade fixtures are an exception to the rule, that anything affixed to the realty becomes a party of the realty, and where something is affixed to the realty for the purpose of carrying on a trade or business, and the operation of an oil well has been considered and held to be that of conducting a business, that you have a right to remove those trade fixtures as long as you do no permanent or serious damage to the freehold or land itself, or, if the tenant occupies a building, permanent damage to the building to which he attaches the fixtures.

On that point I would like to refer the court to Summers on Oil and Gas at page 276 where the author says:

“The lease usually contains a clause permitting the lessee to remove all machinery and equipment from the land.”

The Court: What page number?

Mr. Dechter: Page 276. If your Honor does not have that [27] work handy, I have it at the office and I can bring it over.

The Court: I don't have it.

Mr. Dechter: I can bring it here for you.

The Court: Could you send it to me this afternoon?

Mr. Dechter: Yes, your Honor. It states:

"The lease usually contains a clause permitting the lessee to remove all machinery and equipment from the land. The courts hold that all machinery, as well as casing in the well were trade fixtures and removable by the lessee within the term" citing numerous cases. Then, on page 644 of the same work:

"It is a well-settled rule that casing in wells, derricks, engines and other machinery and appliances placed on the land by the lessee for testing, developing and operating the land for oil and gas purposes are trade fixtures" citing, in addition to the other cases which he cited, additional cases.

Then, in Thornton on Oil and Gas, Volume 1, Fourth Edition, Section 652, it is said:

"There is no difference taking into consideration the character of the fixtures in this lease between a lease to bore for oil and gas and one to dig for coal or other minerals * * * thus a steam engine, boiler and pump sunk into a ledge of a rock in order to get a level and covered by a shed or shelter used in working a mine is trade fixtures and may be [28] removed by the tenant."

I refer to the case of *Merritt v. Judd*, 14 Cal., page 60:

“Where A agreed with B to put in machinery to bore a salt well on B’s land and B sold the land to C. Held: The machinery did not pass by the conveyance. It was put on the premises for a temporary purpose to sink a well and could be removed without injury to the freehold.”

In the case of *Perry v. Acme*, 44 Ind. App. 207, being one of the cases cited by Summers, it holds oil machinery to be trade fixtures and holds that they were not lost to the trustee in bankruptcy of the lessee’s transferee by reason of a judgment of a state court declaring a forfeiture of the lease.

In the case of *Churchill v. Moore*, 4 Cal. App., page 219, it was held that where the oil lease provides that the lessee could remove fixtures, machinery, etc., at any time, lessee was given the right as against a subsequent purchaser.

The Court: Do you have any case where this question arose in a condemnation proceeding?

Mr. Dechter: No, your Honor. I think I can reconcile the cases.

The Court: I just asked the question. You may proceed.

Mr. Dechter: In the case of *Midland v. Rudneck*, 188 Cal. 265, which also involved an oil well, and incidentally, [29] that *Churchill v. Moore* case was an oil lease case too.

In *Midland v. Rudneck*, 188 Cal. 265, it was held that boilers and other equipment and a derrick

placed on a mining claim for the purpose of boring for oil * * *”

Incidentally, your Honor, in those days when that case was decided oil wells on Government lands were treated the same as mining claims and came under the mining claim lease Act. In other words, people located oil wells in the same manner they located mining claims, and the court said this:

“Where boilers and other equipment and a derrick placed on a mining claim for the purpose of boring for oil and under a contract with the owner that the same might be removed, and the evidence shows that the boilers and derrick were not affixed permanently to the ground but rested of their own weight thereon, such property was personalty insofar as the contractor and the owner and the owner’s successor in interest is concerned.”

The court saying that it is common knowledge that rigs of this character are moved from place to place by the owner and that the derrick was personal property.

Other illustrative cases of trade fixtures under Civil Code, Section 1014, which declares them to be trade fixtures and the right to remove them, are the cases of *McGary v. Osborn*, 9 Cal. 119. Also 118 Cal. 635, and 21 Cal. App. 480.

The case of *Murr v. Cohn*, 87 Cal. App. 478, involved a [30] gas station where pumps and gas tanks were put in concrete in the ground, and the court held they were trade fixtures and removable.

The Court: What case is that?

Mr. Dechter: *Murr v. Cohn*, 87 Cal. App. 478.

In 26 Corpus Juris at page 684 it is said: "An agreement that an article or structure"—

The Court: 684?

Mr. Dechter: Yes, your Honor.

"An agreement that an article or structure attached to the real estate shall be removable or shall remain personalty, whether expressed, or merely implied from the making of a chattel mortgage thereon, the conditional character of a sale thereof, or its annexation under license, is ordinarily given full effect as against a mortgage of the realty made previous to annexation, * * *"

In a decision by the Appellate Department of the Superior Court, decided June 15, 1937, being the case of *Huntington v. Novotney*, and published in the *L. A. Daily Journal*, there was a case where a holder of a street bond foreclosed on a piece of real estate on which there was a service station and acquired a deed to the property, and there was a question whether the service station equipment which is affixed to the real estate, as your Honor is familiar with, passed with the sale of the real estate under this foreclosure of the street bond, and the Appellate Department said:

"Lessee's right of removal of service station equipment from the realty is superior to that of the purchaser of the realty only, at a sale for non-payment [32] of a street improvement bond."

The Court: Was that published in any of the reports?

Mr. Dechter: I don't know. All I have, your Honor, is a clipping, unreported decisions. I can

check and see. They usually are published in the California Appellate Reports in the appendix. I will check it and give your Honor the citation. Apparently it was put in my file at or about the time it came out.

The Court: What was the date of it?

Mr. Dechter: June 15, 1937. That was an appeal from the Municipal Court to the Appellate Department of the Superior Court.

Therefore, your Honor, on my first point it is that a condemnation of the lands only, being in the same category as a sale of the land by the owner of the land to a buyer, would not have passed or conveyed title to this particular personal property because it was personal property, and also under the usage in the oil industry anybody buying real estate would be chargeable with knowledge that personal property used in connection with an oil well is removable by the lessee of the oil well in question.

On the second point, from a practical standpoint I can't see how it makes any difference, because Mr. Weymann has to admit that if the land was condemned as a unit it would be necessary to determine the value of the [33] component parts of the unit where the unit was not all owned by one person.

For example, we have condemnation cases in this state where business buildings have been condemned. It is true that the value is brought in as of the property as a unit, but then it is necessary to determine how much is the value of the lessee's interest. In some of those cases the lessee's interest

has been even greater than the owner of the land itself.

So, from a practical standpoint I can't see how it would make any difference. And in this case we have the anomalous situation that the government has already settled with the landowner and the landowner's rights are not involved, the lands aren't involved at all, all that is involved is this leasehold and this personal property.

All of the cases that counsel has cited, as I gather from his argument—I am personally familiar with the first case that he cited, *City of Los Angeles v. Klinker*, which involved a condemnation of the Klinker Building on First and Broadway. That was a case where the building was owned by the person who owned the printing presses, and what the owner was attempting to do was to segregate the valuations of a portion of the building so as to get a valuation as personal property and a valuation as to real estate as to the balance. In other words, there was no lessee involved, there was no apportionment [34] involved, and the court held, therefore, it was the value of the property as a unit.

The Court: Here we have the ownership of the leasehold and of the so-called personal property in one person.

Mr. Dechter: That is correct, but the owner of the land is a different person.

The Court: I know, but we are not considering the owner of the land here. Mr. Weymann, as I take it, argues that the rule would be just the same

whether it was the owner on both the land and the personal property, or whether the leasehold owner owned the lease and the personal property, the ownership resides in one person.

Mr. Dechter: My argument is that the analogy is not the same. For example, supposing we had a leasehold on a store on Broadway, your Honor, and in connection with that store there were counters, fixtures, and other items necessary to carry on the business, besides stock in trade. In that particular case the value of a leasehold interest would have no relationship whatever to the fixtures or equipment used to carry on that business that is carried on in the leasehold. The value of that leasehold would be determined by what the income or value was that the lessee would make over the period of the lease. In other words, supposing he was paid a rent of so much a month, say \$200.00 a month, and he could show that the leasehold by reason of the amount of business he was [35] doing had a value to him of, say, \$300.00 a month, he would be entitled as the valuation of the leasehold to \$100.00 a month multiplied by the term of the lease. Or, for example, take the same illustration and using a different line of reasoning, supposing he was paying \$200.00 a month for this leasehold, and supposing real estate conditions had changed so that if he wanted to move his fixtures out and move his business out he could turn around and sublease it to somebody else for \$300.00 a month, he would be able to show that as the value of the leasehold.

Now, here we have a leasehold involving oil in the ground; the government isn't condemning this property for the use of an oil well, the government is condemning this property for the use of a reservoir, and under the law it has to pay what a purchaser would pay considering all the uses to which it would be put. Now, one of the uses to which it might be put is the recovery of so much oil in the ground, and therefore that oil in the ground has a separate potential value.

Now, they have a right to show in reducing the valuation that we put on a leasehold that in order to get that much oil that is in the ground out it will cost so much to get it out, and therefore that will be deducted, I presume, by their experts, from the total amount of oil which they consider would be extracted from the premises. In other words, the cost of extracting it. But the equipment has a value all by itself, [36] just like the fixtures in a department store.

Supposing they came along, and supposing this field had all been condemned and there were only two or three wells on it, and it was still suitable as a gas reservoir and would save the government a lot of money because it wouldn't have to put storage on the surface taking up maybe twice or three times the area, and building steel tanks, in order to utilize it properly it would have to drill additional wells to be able to force more gas in it than it could by one well or two wells, it would have to pay for the equipment necessary to drill those additional wells. Now, that equipment is there, it is

available for use. Are they to get that equipment for nothing and just pay for the value of the oil in the ground alone? That is what Mr. Weymann's argument is.

In other words, my contention is that the fair market value, what a purchaser willing to buy and having a reasonable time to look around would pay, and what a seller who is willing to sell and having a reasonable time in which to find a buyer would sell, both of them will take into consideration, first, how much oil——

The Court: I think you have already argued that, Mr. Dechter. Let me ask you this question: How do you distinguish these cases that Mr. Weymann has referred to?

Mr. Dechter: I distinguish them in this way, that in the case of the Times—— [37]

The Court: Or reconcile them?

Mr. Dechter: In the case of the Times there was no separation of ownership, and what the property owner was trying to do was to treat fixtures like plumbing separate from being a part of the building. In other words, like the paper mill that he referred to, if that paper mill was sold it would be sold as a unit, and it is the market as a whole.

It is my contention the market of my leasehold is made up by the oil in the ground and by the personal property, those are the two elements that make it up, and by any other use to which the property can be put. That seems to be indicated by this district judge opinion from the District of Columbia that he cited, in which they point out that

where there is a divorcement of ownership between the real estate and the personal property, and it is necessary for an apportionment, you have to put a separate valuation on it. In this case of the San Diego Bank, it was a case where the bank owned the building and the vault, and, incidentally, in that connection I understand in a later case the county assessors have treated for taxation purposes the vault as being part of the real estate. Now, using that point, it just occurs to me that the county assessor in assessing an oil well assesses it in this manner: First, the mining rights. That would be the value of the oil in the ground, the oil recoverable; second, the personal property consisting of the derrick, tubing, [38] rods and the pumping equipment. Now, in so far as the tubing and rods are concerned, your Honor, that isn't a permanent part of the premises; those things hang in the hole, and in an ordinary well they are probably taken out maybe on an average of once or twice a year for the purpose of cleaning out the hole or for the purpose of removing a clog in the tubing, or a rod breaks and it is a simple matter just to pull it out of the hole, and you insert it back in. It hangs on a hanger. The derrick, it is common practice for derricks to be skidded off one location and moved to another location. Tanks, the same manner. In other words, even from the standpoint of fixtures, they are not so affixed to the real estate as to become a fixture. In this case we have a specific right on the part of the tenant to remove the casing, as well as the rest of the other personal

property, and you don't have that situation in any of the cases that counsel has cited.

Mr. Weymann: May I reply very briefly, your Honor?

We have, of course, no quarrel with the general proposition that these fixtures are trade fixtures and may be removed as between lessor and lessee. There is no question as to the statement of the law by Mr. Dechter in that regard. Our contention is, however, that it does not apply as between condemnor and condemnee. Mr. Dechter uses the illustration that a purchaser of this leasehold estate would not acquire [39] the personal property. Obviously because a purchaser of any property takes it subject to the covenants and conditions of the lease. A lessee and a lessor may agree that a building, even, may be personal property no matter how it may be affixed, and it depends entirely on the agreement between them. But when the government comes in and takes possession and condemns all of the property, as Justice Cardoza once used the expression, if there is such a thing as an original title, it is a title derived from a condemnation proceedings. [40]

The Court: Well, when you say condemns all the property, there is where the bone of contention is. If there was no question about all the property being condemned, then we wouldn't have anything to argue about. However, there might be a case. Suppose you brought your condemnation. Let us take the Treasure case, the one Judge McCormick had before him where the question as to the per-

sonal property was involved. The mere fact that you said you were going to take the land would not necessarily include the personal property. You say, "We are not interested in the personal property." You might say that. "We don't care anything about the personal property, all we want is just the land," and I think you might well take that position in some similar case. That is, you started out here. You say, "We are taking the land. We are taking the real property, and we are not interested in these other things." The condemnee might say, "Well, now, here is some property that is of no use to me. It is personal property. It is connected with the operation of the well and you ought to take it."

You might take the other side of it and say, "We don't want to take that because we are interested only in the condemnation of the land."

Mr. Weymann: That, as a matter of fact, is what was done. In many instances that surplus equipment was actually returned. [41]

The Court: What about these rods that were referred to? They are not attached in any way to the well or the derrick?

Mr. Weymann: They are part of the operating equipment under these cases.

The Court: Well, would a wrench be a part of the operating equipment, too?

Mr. Weymann: No, because it wasn't used for that particular well. A wrench can be used for any purpose.

The Court: So can rods, I assume, from what Mr. Dechter said.

Mr. Weymann: In a well, yes.

The Court: Then, what about the derrick? For example here, I think the court will have to take judicial notice that a derrick is ordinarily found in these oil fields in California and may be and usually is removed from the well site, and Mr. Dechter has made the statement that maybe he skidded from one location to another.

Mr. Weymann: That is correct, your Honor, and as between lessor and lessee there is no question about that. I used an unfortunate expression when I said "taking all the property."

The Court: That is what I had in mind.

Mr. Weymann: What I meant there was that we took the property of both the lessor and the lessee, so that as between the two parties, as between their respective rights, those were merged in the entire taking. When the Government comes [42] into possession, it does not come in as the successor in interest and subject to all the covenants and conditions. It comes in under the original proceeding, and that is precisely what was held in the cases which I have cited to the court.

Reference was made to Judge McCormick's opinion as to the equipment. As I attempted to point out before, that equipment is lying on the ground. It was not used in the operation of those wells. It was equipment which Mr. Brightwell had put there, drilling equipment which he was using or had used or intended to use in the drilling of other

wells. There is no question about this property being trade fixtures, but under the cases we believe trade fixtures pass with the realty in a condemnation suit.

The Court: What about the position Mr. Dechter has referred to "The action is to be construed as a sale between the grantor and the grantee"?

Mr. Weymann: Only to this extent, that the measure of compensation for the taking is that which a willing purchaser would pay to a willing seller, a reasonable time having been had——

The Court: That only refers to rules of evidence.

Mr. Weymann: It only refers to rules of evidence, but the Government is not in the position of a purchaser because the Government comes in under its paramount authority. It is [43] not a successor in interest of the rights of the owner. For example, suppose the property was held subject to various covenants and restrictions. The purchaser of that property from the owner would take it subject to the covenants and restrictions, but in a condemnation proceeding if all the parties were brought into the proceeding those covenants and restrictions would be wiped out and a new title would be taken. The Government is not in a position of a buyer.

The Court: Yes. I interrupted you. Now, have you anything further to add?

Mr. Weymann: Just this one more point. Under Section 1246 of the Code of Civil Procedure of the State of California, the property is to be

taken as a unit. While it is true that there may be, as Mr. Dechter said, an apportionment of the compensation as between lessor and lessee and the various interests in the unit taken, the condemnor is entitled to have the property taken valued as a whole and an entire award made.

The Court: All right. What effect does that have upon the date of the determination?

Mr. Weymann: Well, that has no effect on the date of the determination because that is dependent entirely upon the question of whether or not this equipment, this operating equipment was included under the original authorization.

The Court: Well, we are really arguing here, any way I thought you were originally to argue this so the court would [44] know what was the proper date for the determination of the value, whether it is September of 1942 or October of 1943. That is the question we started to argue here.

Mr. Weymann: That is correct, and our position is that the date is September 28, 1942.

The Court: That is the reason I am asking you about this. If it is to be determined as a whole, your position is that it must be as of September of 1942, but suppose Mr. Dechter's position is correct, your position being correct that it must be determined as a whole, then would it have to be determined as a whole as of October of 1943?

Mr. Weymann: I don't see how it can be, because there isn't any question but what the land was taken on September 28th.

The Court: There is no question but what the

other part was taken in October of 1943. Then, where are we?

Mr. Weymann: Well, then, as a matter of necessity, assuming that of course as a hypothetical situation, then as a matter of necessity it would have to be valued as of a later date.

The Court: Then the values would have to be separate?

Mr. Weymann: They would have to be separate because there would be two separate takings. We would have an analogous situation it would seem where you have a condemnation of an easement in certain land, we will say, and a subsequent [45] condemnation of the fee, or a condemnation rather of a leasehold, which is exactly what frequently happens. The Government comes in and takes the term of a year on property and then subsequently comes and takes the fee. There would have to be two separate proceedings.

The Court: Yes. Now, let us take this, Mr. Weymann. Suppose we have, as in our particular case here, the condemnation of the land beginning say on September 1942. Then, later on, by the amendment which we have, certain personal property is to be condemned. Let us just take that particular case which may not be involved here, but let us take that anyway. Then, there would have to be two separate valuations, wouldn't there?

Mr. Weymann: Yes, there would. I see no other out.

The Court: So then, in that event, there would

be a departure from the ordinary rule that there must be just one valuation?

Mr. Weymann: Yes, the unit rule.

The Court: I have asked you gentlemen to argue this for the enlightenment of the court. Is there anything else you would like to call attention to?

Mr. Weymann: I think not. I think our position is stated in those cases, and if I may submit the California citation on the other one?

The Court: Yes. I would like to have you do that, and [46] then you gentlemen look up this question of the sub-lease and let the court know about it as soon as possible.

Were you about to add something, Mr. Dechter?

Mr. Dechter: Yes, two things, your Honor.

The Court: Have you finished, Mr. Weymann?

Mr. Weymann: Yes, sir.

Mr. Dechter: Page 1 of the exhibit to the last amended complaint, which is the inventory, is headed "Union Oil Company of California Inventory of Materials and Supplies taken over by Defense Plant Corporation, September 29, 1942." Page 105 of the same exhibit is headed exactly the same way for the Treasure Oil Company. I am merely pointing that out in connection with Judge McCormick's decision.

Now, on the point of the analogy of vendor and vendee, my instruction No. 14, which is based on the United States Supreme Court case, says:

"In determining the market value of the property condemned for public purposes, the same con-

ditions are to be regarded as in a sale of property between private parties.”

The Court: Read that first part.

Mr. Dechter: “In determining the market value.”

The Court: Well, I think that is what Mr. Weymann contends. Isn’t that right, Mr. Weymann?

Mr. Weymann: I didn’t get that, if the court please. [47]

The Court: It seems to be a rule of evidence that he is referred to.

Mr. Dechter: I will read it again:

“In determining the market value of the property condemned for public purpose, the same conditions are to be regarded as in a sale of property between private parties.”

Therefore, my contention is that if there was a sale of lands between private parties, it would not include a sale of trade fixtures or personal property.

Mr. Weymann: May I make one observation, your Honor?

The Court: Yes.

Mr. Weymann: Mr. Dechter referred to this inventory and referred to the Treasure Company property beginning on page 105. The whole controversy with respect to the Treasure Company property was not that property on page 105, but solely on that property which is headed “Items deleted from the original inventory as not being needed in the Playa del Rey project.” The property in the well was not under consideration at all.

Mr. Dechter: Mr. Weymann, answer me this. Isn't it a fact that your office intervened in the State Court action and moved for its dismissal upon the ground that this court had exclusive jurisdiction in the condemnation matter over the same property? And, isn't it a fact that you asked Judge [48] McCormick in this very same case to enjoin the State Court from going ahead with that matter because it involved the same property that was covered in this condemnation matter?

Mr. Weymann: That is correct.

Mr. Dechter: And that is what Judge McCormick said.

Mr. Weymann: Yes, that is correct. Judge McCormick held that the property which was marked "Deleted" was not included in the condemnation.

The Court: If you have finished, I would like to ask you another question which I think may save some time in the actual trial, and that is as to whether you can agree upon the rule to be followed as to the reception of evidence, that is, as to the sale of other property, evidence of sales, whether it may be brought out on direct examination or upon cross examination. I have had some cases recently in which that matter has been discussed, and the attorneys have been able to agree.

Mr. Weymann: May I say this, your Honor, and in the first instance I am willing to stipulate that the highest and best use of that property is the use to which it was put by Mr. Block.

The Court: That will save time.

Mr. Weymann: So that will eliminate that question.

The Court: Do you agree to that, Mr. Dechter?

I will agree that is the highest and best use that Mr. Block put the property to, but I would not agree that it is the highest and best use to which the property might be put.

The Court: Then you don't agree?

Mr. Dechter: No, your Honor.

Mr. Weymann: No, we don't, then.

The Court: What about the question I asked?

Mr. Dechter: There was some confusion on that point up until two years ago when the legislature of California amended the Code by adding a new section which gives an expert on direct examination the right to give his reasons instead of waiting until cross examination.

The Court: Yes, but I want to tie it down to something more specific, that is, as to giving the evidence of the sales of other similar property. Usually that is brought out on cross examination. In cases I have had recently it has been agreed that it might be done either way, as the parties desire.

Mr. Weymann: I am willing to so stipulate.

Mr. Dechter: I will so stipulate.

The Court: That is, that it may be brought out either on direct or cross examination?

Mr. Weymann: Yes.

Mr. Dechter: So stipulated.

The Court: Very well. Court will recess until tomorrow [50] morning at 10:00 o'clock.

(Whereupon, at 12:25 o'clock p. m. Tuesday, July 24, 1945, an adjournment was taken until 10:00 o'clock a. m., Wednesday, July 25, 1945.)

Los Angeles, California,

Wednesday, July 25, 1945, 10 a. m.

(A jury was duly empaneled and sworn.)

The Court: All the others who have been summoned here to act as jurors are now excused. You will return when notified.

Is there to be an opening statement? If so, you may proceed.

Mr. Weymann: Yes, I think I desire to make an opening statement. At this time, however, if the court please, I would like to offer a stipulation that all the proceedings had yesterday morning and all of the evidence introduced may be considered as introduced in the course of this trial.

The Court: That is, those which were introduced?

Mr. Weymann: Those which were introduced.

The Court: In other words, you adopt the proceedings of yesterday as part of this trial?

Mr. Weymann: That is correct.

Mr. Dechter: So stipulated, and may I ask counsel for the Government to stipulate that the sublease owned by Sam Block provides in paragraph 9 thereof as follows:

“On termination of this sublease by the sublessor for any reason whatsoever, sublessee shall quitclaim and peaceably surrender to the sublessor these premises and thereupon sublessee shall be given 30 days to thereafter [53] remove any personal property and equipment placed on the premises herein subleased.”

Also, that paragraph 13 of said sublease provides as follows:

“Each and every term of the original oil and gas lease shall be binding upon the sublessee to the same purpose and to the same effect as if each and every term and condition thereof were fully set forth herein, and sublessee hereby agrees to comply with each and every term and condition thereof and to hold sublessor free of each and every obligation imposed by said original lease, and free and clear of all liability in any way pertaining thereto, and sublessee shall be entitled to all benefits of the said oil and gas lease which do not conflict with the express terms of the sublease; provided, however, that the terms of this paragraph shall apply only to the premises herein subleased.”

Mr. Weymann: So stipulated. [54]

Mr. Weymann: Mr. Dechter, may it be stipulated that this map of the area may be used for the purpose of identifying the property, subject to correction?

Mr. Dechter: I will so stipulate, your Honor, but in view of the fact that I haven't personally examined the map and rely upon Mr. Weymann, the stipulation would be subject to any correction I might make during the course of the trial.

The Court: Is that satisfactory, Mr. Weymann?

Mr. Weymann: That is perfectly satisfactory.

The Court: It is agreeable to the court.

Mr. Weymann: May we offer this as an exhibit for identification?

Mr. Dechter: No objection.

Mr. Weymann: Exhibit next in order.

The Court: It may be marked as Plaintiff's Exhibit No. 6 for identification.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 6, for identification.)

Mr. Weymann: I wonder if we may have the blackboard. Can you all see that map?

Ladies and gentlemen, or lady and gentlemen, to enable you to follow intelligently the evidence which will be produced before you, and upon which you will base your verdict in this case, it is necessary that you should have some idea of location, nature and extent of the property which is taken [55] in this proceeding in condemnation by the United States under its power of eminent domain.

Outlined here in red——

The Court: Mr. Weymann, may I suggest that you stand a little to one side so the court will have a full view?

Mr. Weymann: Yes. Outlined in red here is what is generally known as the Playa del Rey oil field. That is located north of Manchester Avenue about a mile from the Pacific Ocean. Are you familiar with those streets?

Here is Manchester Avenue running west, and here is Pershing Drive. Most of this property is on a hill——

The Court: Mr. Weymann, if you could do that from the other side it might be better. might be a little awkward, but I couldn't see what you were indicating.

Mr. Weymann: Here is Pershing Drive, and about a half mile further is the hill, palisades overlooking the Pacific Ocean.

Running down here is Culver Boulevard, and the old Pacific Electric Railway right-of-way to Manhattan Beach.

What is being condemned in this project is an underground natural reservoir for the conservation, the storage, injection and withdrawal of natural gas. Mr. Block owned certain interests in that property which I will describe, and for which he seeks and is entitled to receive compensation, just compensation. [56]

In the ordinary condemnation proceeding we deal with ordinary real estate; that is, property which is subject to view, which is on the surface, and which consists of perhaps a lot of buildings, improvements, and perhaps some property. We have a more difficult situation here, because the property involved in this particular trial consists of certain mineral rights and oil lying 6,000 feet under the ground. Mr. Block has certain interests in those mineral rights.

The evidence in this case will, in the first instance, serve to dispel some popular notions with regard to the nature of an oil deposit. Many people imagine that oil is found underground in a pool or a lake or in a river. That is not the case.

The oil which is recoverable in an oil well is contained in a sand or sandstone or limestone of a sparse coat which is saturated with oil and gas and to some extent water, laid and overlaid with layers

of impervious rock which prevents its escape to the surface. Perhaps an illustration will serve to show what is meant.

We may take a five-gallon bucket of sand and fill it to the top with sand so that no more can be put into it and yet you may pour into that a fluid, oil or water, which is absorbed and taken up without increasing the volume. That is dependent upon the porosity of the sand, that is, the spaces between the grains of sand. Now, in that way oil and gas are found in a subsurface condition. The oil is usually associated with gas under pressure so that if a well is drilled from the surface down to the oil sands and a vent left for raising it to the surface, the internal pressure, the pressure of the gas, will force or compel the oil to flow to the surface and there you have a flowing well.

Now, as that oil is gradually withdrawn together with the gas, the pressure decreases and then the well has to be put on the pump, and it is pumped until it reaches a state of depletion. That is the stage at which the amount of commercial oil and gas which may be recovered no longer is sufficient to justify the cost of raising it to the surface and making it salable, and in that event, of course, the well is abandoned. [58]

Now, the term "abandonment" used in the oil industry has a special and peculiar significance which the evidence will disclose here. It means something more than just walking away and leaving it, and you will hear a number of technical terms which so far as possible the witnesses will explain.

Now, for a man to drill a well and produce oil from it, it is necessary for him to have a drill site or a well site. That means that he must either own the land over the surface and the surface, or he must make some arrangement with a man who does own it. That gives rise to an oil and gas lease. An oil and gas lease simply means this, that the owner of land overlying an oil-bearing structure or oil-bearing sands, or believed to be oil-bearing, enters into an agreement with a man who will drill or produce, or attempt to produce oil, and in consideration of that right, the owner will receive a certain proportion free and clear of the cost of operation of the oil and gas produced, which is called the land owner's royalty which varies according to the field and according to the location and the condition. In this instance it will be shown that the land owner's royalty was 1/6th of the oil and gas produced.

That is the land owner's royalty, and in consideration of that a lease is executed which enables the operator to produce that well so long as oil and gas is produced in paying quantities. Now, sometimes, as in this instance, the man who owns [59] or who has acquired the original lease, the right to produce the oil, does not drill any wells but he subleases to someone else, as in this instance.

The evidence will show that there was an original lease, a master lease called the Spangler lease on this property outlined in green, excluding however those lots which are marked in green. The original lease, the Spangler lease, was made on a 1/6th

royalty. Mr. Spangler in turn subleased portions of his lease to the Colly Oil Company on a 30 per cent royalty. That is, the Colly Oil Company would pay the land owner the 1/6th royalty and would pay the sublessor, Mr. Spangler, the difference between the land owner's royalty and the 30 per cent, that is, 13 and 1/3rd per cent. That is called an "overriding royalty." The only difference between the land owner's royalty and the overriding royalty is this, that the land owner's royalty goes on indefinitely as long as oil and gas can be produced, but the overriding royalty continues only so long as the lease, as the master lease in which the overriding royalty is reserved, is in good standing.

By two subleases, Mr. Spangler subleased to the Colly Oil Company these drill sites or well sites marked here in purple, and these dots here show the two wells drilled by the Colly Oil Company. One, at the time the Government took it over, was a producing well and that well which is located here is now known, or was at the time the Government took it, as [60] Block's No. 10, I believe. So, Mr. Block now claims compensation for the value of his sublease, that is, for the value of the right to produce the oil from that sublease and the royalty of 30 per cent.

However, Mr. Block also has another interest. That is, he has a portion of the original overriding royalty which he purchased, and to return, I said that these subleases were made to the Colly Oil Company. Then, Mr. Block subsequently purchased from the receiver of the Colly Oil Company all the

right, title and interest of the Colly Oil Company in these leases and subleases and now owns them.

Mr. Block also owns of the overriding royalty 10 7/12th per cent of the total production, remembering that Mr. Spangler in his sublease had reserved the overriding royalty being the difference between 1/6th and 30 per cent, the 10 7/12ths, then of the total production Mr. Block owns as an overriding royalty, and evidence will be introduced as to the value of that separate and apart from the value of his sublease and his equipment thereon.

As the court has informed you, in a condemnation suit the order of proof is reversed, that is, the defendant puts on his case first and shows his conception of value, and then the plaintiff offers its evidence in rebuttal.

I think that about concludes what I have to say, if the court please.

The Court: Mr. Dechter, do you desire to make a statement at this time or at a later time?

Mr. Dechter: I would just as soon make it now, your Honor.

The Court: Very well.

Mr. Dechter: May it please the court, and lady and gentlemen of the jury. On or about September of 1942, as Mr. Weymann has informed you, Mr. Block was the owner of an oil and gas leasehold embracing two parcels of property which are designated as parcels 87 and 103. Both of those parcels were included in what is known as the Playa del Rey oil and gas field.

There had been two wells on each of those par-

cels. However, in September of 1942, only one of those wells was in operation and producing oil, and one day in September, Mr. Block went to his well and he was told that the well was no longer his, that the government had taken it over. About a month later a complaint was filed in this matter in condemnation, but that complaint was not served and was amended some [62] time about a year later, and the amended complaint was served on Mr. Block.

Under that amended complaint it is recited that the government in order to relieve a shortage of gas which would impede the war effort—apparently, as you all know, during the winter in Southern California there usually is a shortage of gas, and during normal times the industrial plants have been penalized so that the homes would get the gas that is necessary, but during the war the industrial plants had to have this gas, so the government, in its wisdom, decided to take over this entire field and use it as an underground gas reservoir, instead of buying a lot of land and building tanks to store gas on the surface.

Mr. Block didn't have this well for sale, but when the government wants something it has a right to take it, and the only limitation is under our Federal Constitution the government must pay full and just compensation for such property.

In their complaint they state that what they desire to take is not only the real property but the personal and mixed property. In their complaint they state the desire to condemn both the full fee

simple title and also title to all the personal property and trade fixtures located on said real property.

The Court: You are now referring to the amended complaint? [63]

Mr. Dechter: Yes, your Honor; paragraph 8 and paragraph 10.

The Court: Well, I only call attention to that because you first said there was a complaint and then an amended complaint. You are now referring to the amended complaint?

Mr. Dechter: Yes, that is the only complaint we have seen, your Honor.

The Court: I just want to make it clear for the record.

Mr. Dechter: Thank you. It will be your province from the evidence that is introduced here to try to place, or, rather, make Mr. Block whole, that is, by giving him what would be a full and fair valuation. If he had desired to sell said property on that date, in arriving at that valuation you are to take into consideration all available uses to which the property might be put.

The Court: I think you are going more into the matter of the instructions of the court as to the evidence that may be received, Mr. Dechter.

Mr. Dechter: Maybe your Honor is right. At any rate, the answer filed by us sets forth that we have this leasehold interest which is subject to a total landowner's and over-riding royalty of 30 per cent, and that is conceded by the government that we own that interest; that we also own 10 7/12 per cent of the sublessor's or overriding royalty.

In other words, Mr. Block has acquired and now stands in a [64] sort of dual position; he is also the lessee and in a way he is also partly the sublessor or landlord of this sublease, so that particular overriding royalty or sublessor's interest has to be valued separately, and the government will agree with me on that point that that will require a separate valuation.

Then there is the personal property and trade fixtures which are located on this well and which are used in connection with the operation of the well. In that regard the court will instruct you as to how you are to place your valuation on that property and as of what date that valuation shall be fixed. I believe that covers it, your Honor.

The Court: The court will take a recess at this time and the court admonishes the jury that at this recess and at all others it is their duty not to converse among themselves nor to suffer any one to address them upon any subject connected with the trial, and not to form or express any opinion thereon until the cause is finally submitted to the jury. This is not just a formal admonition to be listened to and not heeded, but it is one that must be heeded very carefully. It is very important that this be heeded in its entirety by the members of the jury. I may say that sometimes during the course of a trial, and particularly if the trial is extended, when you are away some one may come up and start to talk with you about the trial. It is done innocently in most cases. [65] But if that hap-

pens, just say, "I am on the jury and I can't talk with you."

You are now excused for a few minutes. You may retire to the jury room, and you will return when called by the bailiff.

(A recess was taken.)

The Court: The jurors are all present and in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: You may proceed.

Mr. Dechter: Call Mr. Block.

SAM BLOCK,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name is Sam Block?

The Witness: Sam Block.

Direct Examination

By Mr. Dechter:

Q. Mr. Block, you are the defendant in this case? A. The defendant, yes.

Q. And you are the owner of parcels 87 and 103, described in the amended complaint filed in this matter? A. Yes, sir.

Q. And those parcels consist of subleases on the real [66] property described in the amended complaint. A. Yes, sir.

(Testimony of Sam Block.)

Q. And those subleases are subject to 30 per cent landowner's and sublessor's royalty?

A. Yes, sir.

The Court: Will you talk out a little louder, please, Mr. Block?

The Witness: Yes.

Q. By Mr. Dechter: On one of those subleases is located a well known as Block Well No. 10?

A. Yes.

Q. And on that well in September of 1943, '42, rather, was there personal property, machinery and equipment, used in connection with the operation of that well?

A. Yes, sir.

Q. And that personal property is the personal property described in the exhibit attached to the complaint, being Exhibit C?

The Court: Are you referring to the amended complaint?

Mr. Dechter: Yes, your Honor.

The Court: I think it would be better for you to designate it.

Mr. Dechter: An amended complaint?

The Court: Yes; because of some controversy of which you are aware, I think it would be better to so refer to it. [67]

Q. By Mr. Dechter (Continuing): Which personal property is set forth on Exhibit C of the amended complaint, pages 1, 2, 3 and 4, and which is headed "Inventory of Material and Supplies Taken Over by Defense Plant Corporation, Septem-

(Testimony of Sam Block.)

ber, 1942, Block Oil Company, 1055 South LaBrea Street, Los Angeles?"

Mr. Weymann: Just a moment. If the court please, it was my understanding, I believe, that we were to consider now only the overriding royalty until the court determined——

The Court: I think it would be advisable if that could be done.

Mr. Dechter: I didn't make any such understanding. I told the court in chambers that I would not prefer to try it piecemeal, I would rather try the whole thing, and there was no decision made on that point. That is my understanding of what took place in chambers.

The Court: Well, my understanding is the same as Mr. Weymann's; but then you won't be bound by that, Mr. Dechter. My thought was that we would first consider the valuation as to the overriding royalty; that as to the other two items, they could be considered at a little later time, further in the course of the trial. Mr. Dechter, you may proceed in your own way.

Mr. Dechter: Very well. May I have the question?

(The question was read.) [68]

A. Yes, sir, with the exception they overlooked, they forgot to put in 2,000 barrels oil tanks in this inventory. [69]

Q. By Mr. Dechter: In other words, at the time that the Defense Plant Corporation took over your property, there was also on the real property and

(Testimony of Sam Block.)

used in connection with the oil well, two 1000-barrel tanks?

A. Yes, sir.

Q. What were those tanks used for?

A. To pump the oil in.

Q. For the purpose of storing oil produced from the well until such time as the purchasing company removed the oil from those tanks?

A. Yes, sir.

Q. And on or about September of 1942, at the time the Defense Plant Corporation notified you they were taking over your property, what had this Block well No. 10 been producing?

A. 25 barrels per day.

Q. And in addition to your owning this leasehold subject to 30 per cent and the personal property described on Exhibit C of the amended complaint, supplemented by the two tanks which you have mentioned, did you in addition also own a part of the sublessor's or overriding royalty?

A. Yes.

Q. You owned how much?

A. 10 and 7/12ths per cent.

Q. 10 and 7/12ths per cent? A. Yes. [70]

Q. Now, calling your attention to that 10 7/12ths per cent of the gross oil and gas from Block Well No. 10, do you have an opinion as to the value—withdraw that.

What is your business?

A. Producing oil and oil well equipment.

(Testimony of Sam Block.)

Q. When you say oil well equipment, what do you mean?

A. I am in that business of buying pipe, casing and machinery.

Q. You have been in the business of buying and selling and rendering oil well machinery and equipment?

A. Yes, for the last ten years.

Q. For how long?

A. For the last ten years.

Q. Here in Los Angeles?

A. Los Angeles and Bakersfield, both.

Q. How long have you been engaged in the business of owning and operating oil wells?

A. About the same time.

Q. And being engaged in that business, you have become familiar with what people ask and what people receive for oil wells, overriding royalties and oil well machinery and equipment?

A. Yes, sir.

Q. Do you have an opinion as to what the leasehold interest owned by you, subject to 30 per cent land owner's and overriding royalty, was worth, or the fair market value on [71] or about September of 1942?

A. I would judge around \$600.00 a unit.

Q. I am talking now about the leasehold interest.

A. Oh, the leasehold interest. You mean the equipment?

Q. Do you have an opinion? First answer yes or no.

The Court: He doesn't understand the question,

(Testimony of Sam Block.)

apparently from his question, so you had better start in again.

Mr. Dechter: Very well, sir.

Q. Calling your attention now to the leasehold interest which you own in Parcels 87 and 103, subject to 30 per cent landowner's royalty, do you have an opinion as to what the fair market value of that leasehold was, subject to 30 per cent land owner's and overriding royalty?

The Court: I think you had better state the date.

Mr. Dechter: As of September, 1942.

The Witness: Yes, sir.

Q. By Mr. Dechter: And what, in your opinion, was the fair market value of the leasehold interest subject to that 30 per cent landowner's and overriding royalty as on September of 1942?

A. \$35,000.

Q. And does that valuation include the value of the personal property and fixtures?

A. No, sir.

Q. And what in your opinion was the value of the [72] personal property and fixtures set forth in Exhibit C of the amended complaint, adding thereto the two storage tanks you have mentioned?

A. \$22,000.

Mr. Weymann: I didn't get that answer.

(Answer read.)

Q. By Mr. Dechter: What in your opinion was the fair market value of the 10 7/12ths per cent gross overriding royalty in September of 1942?

(Testimony of Sam Block.)

A. \$6,000.

Q. I will ask you, Mr. Block, if you know whether the demand for oil properties was greater than the supply in the year 1942 or particularly about September of 1942?

The Court: What is the purpose of that question?

Mr. Dechter: The purpose is to show, your Honor, that there was a large demand for oil properties and a very few oil properties available at that time.

The Court: What materiality would that have?

Mr. Dechter: Well, it goes to the market value.

The Court: Wouldn't that be more a matter of cross examination? This witness has not only qualified himself to testify as to the value as of September of 1942, but he was the owner of the property. So, he was qualified on two bases. This other, it appears to the court——

Mr. Dechter: I think, your Honor, I don't care to press [73] it, but I think under the new section of the Code of Civil Procedure if a person testified he is an expert, he is permitted to give his reasons as an expert.

The Court: Yes, but you are asking him something that is not involved in that type of question.

Mr. Dechter: Very well.

The Court: If you want him to give his reasons, you may have him do so. He has a right to do that.

Mr. Dechter: You may take the witness.

(Testimony of Sam Block.)

Cross Examination

By Mr. Weymann:

Q. Mr. Block, how did you arrive at the valuation of \$35,000 as the value of your leasehold interest?

A. I arrived by multiplying so many barrels per year and the life of the well would be at least ten years, and by multiplying it, it would be that amount.

Q. Then, will you give us those figures, please?

A. 365 days at 25 barrels per day. That would be 9,125 barrels per year.

Q. Yes?

A. At 94 cents per barrel would be \$8,577.50 per year.

The Court: What was that last?

(Answer read.)

The Court: Proceed. [74]

The Witness: Now, you multiply that by ten years, the life of the well, which is \$8,575.00, less 30 per cent royalty off.

Q. By Mr. Weymann: What?

A. \$8,575.00 less 30 per cent royalty off. It comes to \$60,032.50.

The Court: What?

The Witness: \$60,032.50, and the rest of it I have allowed for operating expense. [75]

The Court: You allowed roughly \$25,000.00 for operating expense, is that correct?

The Witness: Pretty close to that, your Honor.

(Testimony of Sam Block.)

Q. By Mr. Weymann: Mr. Block, do you know what the operating costs a barrel were?

A. No, I didn't go into details on it, of figuring out exactly per barrel; but I think it cost around 45 cents, 40 cents a barrel.

Q. Operating cost?

A. About 40. I don't know, I never kept track of it.

Q. You don't keep books of account?

A. Yes, I do, but we don't break it down exactly to the barrel.

Q. You don't break it down to the barrel?

A. No. I have no company; I am all by myself.

Q. You just kept your operating costs per year?

A. Yes.

Q. In September, at the time this well was taken over, was that well producing 25 barrels a day?

A. Yes, sir; and I could have produced more if I would have used—I have what you call a vacuum compressor.

Q. You may explain that.

A. I have a vacuum compressor which I haven't used it. I could have produced more oil than what I had produced.

Q. But you produced 25 barrels. [76]

A. Yes.

Q. And what gravity oil was that?

A. About 19 gravity at that time.

Q. And did you receive the posted market price for that oil at that time? A. Yes, sir.

(Testimony of Sam Block.)

Q. Which was how much?

A. Well, that year was only around 75 cents per barrel.

The Court: What year is that?

The Witness: In '42 it was only 75 cents. But she jumped.

The Court: What year was that?

The Witness: '42.

Q. By Mr. Weymann: So that in 1942 you received 75 cents per barrel?

A. About, yes.

Q. Mr. Block, you have testified that you have been in the oil business for 10 years producing wells, and you have computed that that well produced 25 barrels a day for 365 days. Is it not a fact that the production of that well has steadily declined?

A. I don't think so. Not according to our books it didn't decline. In fact, I could have made a better well out of it.

Q. Do you know whether it has declined or not?

A. No, sir.

Q. It has not?

The Court: I don't believe he understood the question. Read back the last couple of questions and answers.

(The record was read.)

The Court: Did you mean to say that you didn't know whether it had declined or not?

The Witness: I have had it. It hasn't declined since I have had the well; but what they had be-

(Testimony of Sam Block.)

fore, I don't know, what the well was doing a year or two years before, I don't know.

The Court: You meant that you don't know whether it has declined or not? That is your answer?

The Witness: That is the answer.

The Court: I misunderstood it. I thought you were not answering it as it appeared that you were.

Go ahead, Mr. Weymann.

Q. By Mr. Weymann: How long have you owned that well, Mr. Block?

A. I bought it in about February, 1942.

Q. Am I to understand from your answer that you had no knowledge of the production prior to that time? A. No, I haven't.

Q. You have no knowledge of the production?

A. No. [78]

Q. You don't know what the well was brought in at? A. No, I don't.

Q. In your experience as an oil operator, Mr. Block, is it not a fact that the production of an oil and gas well when it approaches a period, its economic limit, that the production declines?

A. May I answer it, your Honor, a little differently?

Mr. Dechter: Your Honor, I don't understand the question myself. I think the question is ambiguous.

The Court: It isn't very clear to me, Mr. Weymann.

(Testimony of Sam Block.)

Mr. Weymann: I will reframe the question.

Q. By Mr. Weymann: From your experience as an oil operator, can you say whether or not an oil well which approached its economic limit, that is, in the last few years of its production, declined in the amount of oil produced, that is to say, does the oil produced remain constant throughout the entire life of the well?

Mr. Dechter: We will object to it, your Honor, upon the ground it is a compound question. I don't know what part the witness is going to answer. I think it ought to be segregated so the court and jury and I can understand just what part is being answered.

The Court: I believe it is compound, Mr. Weymann. Let's see if the court can suggest a question that might serve to clarify it somewhat. [79]

We speak of the life of a well, that means the time of its economic production, that is, when it pays to produce the oil; that is correct?

The Witness: Yes, that is correct.

The Court: Now, toward the end of the life of a well, does it decrease from its peak production?

The Witness: Well, that is a question, your Honor, I would like to explain just a couple of words. My experience in the oil field, I happened to own quite a few wells, about 10 wells, and I bought them run down and have improved each one of them during my time that I got ahold of them in production by working on them. It just

(Testimony of Sam Block.)

depends how they are taken care of. That is my experience.

The Court: Generally speaking, there is the life of a well, that is, it produces over a certain period of years?

The Witness: That is what they say in the oil field, but I didn't have that experience.

The Court: Go ahead, Mr. Weymann.

Q. By Mr. Weymann: Mr. Block, how do you arrive at the figure of \$6,000.00 for the overriding royalty? A. \$600.00 a unit.

Q. How much? A. \$600.00 a unit.

Q. How do you arrive at \$600.00 a unit?

The Court: What is a unit? [80]

The Witness: Well, one royalty, two royalty.

The Court: One per cent?

The Witness: One per cent, that's right.

Q. By Mr. Weymann: How do you arrive at \$600.00?

A. I know in some fields they are asking as high as \$1500 00 a per cent, in some fields, some wells.

Q. Speaking of this field.

A. I arrived at the value of the production and so forth.

Q. What I want to know from you, Mr. Block, is how you figured \$600.00 per unit and not \$500.00 or \$1,000.00 or \$1500.00, or \$50.00.

A. On the basis of the income, Mr. Weymann.

Q. On the basis of the income? A. Yes.

Q. What was the income?

(Testimony of Sam Block.)

A. Well, I just gave you the figures.

Q. You gave me the total valuation. What was the income from the overriding royalty?

A. I didn't break that down, Mr. Weymann. I didn't break that down, the income. I know I paid—for instance, I paid that company in Hollywood, they had about 16 per cent, I can't think of their name, Bisma was connected with it, Hollywood Guarantee—

Q. In other words, I understand, then, Mr. Block, that [81] you have no way of segregating the income from the overriding royalty from your operating—

The Court: Mr. Weymann, I think you interrupted him before he finished. I think he was about to say what he paid to the owner.

The Witness: I used to pay between \$135.00 to \$140.00 a month

The Court: Now, you say you used to. What year?

The Witness: From the time I got ahold of it.

The Court: From February of 1942 up to September 28th? Which is it, 28th or 18th?

The Witness: 28th.

The Court: 28th of September, 1942?

The Witness: 1942, yes.

The Court: During that time you paid to the owner each month, to the owner of 16 2/3, royalty of how much?

The Witness: \$130.00 to \$135.00; it depends.

The Court: \$130.00 to \$135.00 a month?

(Testimony of Sam Block.)

The Witness: Yes.

The Court: It varied according to the production?

The Witness: Yes.

Q. By Mr. Weymann: The landowner's royalty of \$130.00 to \$135.00 per month.

A Pardon me. You see, the advantage of owning a royalty, you are exempt from income tax on it, too. [82]

Q. By Mr. Weymann: Let me ask you this: Is that subject to the dehydration charge, or inclusive of it?

The Court: Do you think that statement ought to be allowed to stand, "it is not subject to any income tax?"

Mr. Weymann: No. I move to strike that.

The Court: Because I think you might agree, if that is important, that there is a percentage of deduction that is allowed, but it isn't 100 per cent.

Mr. Dechter: That is correct. It is 27½ per cent that is tax-free.

The Court: Well, that answer may go out. Mr. Weymann, is it stipulated that the deduction is 27½ per cent?

Mr. Weymann: It is stipulated that the deduction is 27½ per cent. But I don't see the materiality of it.

The Court: As to the matter of its materiality, this witness volunteered it, you didn't state any grounds for your motion to strike.

Mr. Weymann: Very well

(Testimony of Sam Block.)

Q. By Mr. Weymann: Mr. Block, in estimating the income from that leasehold estate, which you stated to be \$35,000.00, you need, of course, operating equipment in order to produce that income, do you not? A. Yes, sir.

The Court: Mr. Weymann, it is just 12:00 o'clock, and before you start on another phase of this cross-examination [83] I think it would be well to take our noon recess. The court, accordingly, will take its recess at this time until 2:00 o'clock. During this recess the jury will bear in mind the admonition of the court heretofore given. You will return at 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock of the same day.)

Los Angeles, California,

Wednesday, July 25, 1945, 2:00 p. m.

The Court: The jurors are all present, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: First, I want to say that I beg pardon for being late, but I was involved in some important business of the court.

Mr. Weymann: May counsel approach the bench, your Honor?

The Court: Yes.

(Thereupon, counsel approached the bench, and a discussion was had out of the hearing of the jury and off the record.)

Mr. Weymann: Will you read the last question and answer, please?

(Record read.)

SAM BLOCK,

called as a witness by and in behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

By Mr. Weymann:

Q. And in making that estimate of \$35,000.00, Mr. Block, did you contemplate the use of the equipment which was [85] on the well at the time you last operated it when the Government took it over?

A. I don't quite understand that question.

The Court: Read the question, please.

(Question read.)

The Witness: I don't get it.

The Court: Reframe the question. He apparently doesn't understand it.

Q. By Mr. Weymann: Mr. Block, in order to produce this oil, the future production which you valued at \$35,000, it was necessary, you had in mind that it was necessary to have equipment, pumping equipment, casings and rods and tubing to produce that. Now, in arriving at that figure, did you have in mind the use of the equipment which was on the well when the government took it over?

(Testimony of Sam Block.)

A. Well, you got to have equipment in order to produce.

Q. Well, was your \$35,000 figure based on the use of that equipment? A. No.

Q. Well, in that event what equipment would you use?

A. Well, you got to use pumping equipment in order to operate, but this equipment I didn't—you mean to depreciate it or anything like that?

Q. Well, let me try to reframe the question again. You estimated the value of the future production at \$35,000? [86] A. That is right.

Q. Was that based on the use of the equipment which was in the well or similar equipment?

A. I just based it on the production of the oil.

The Court: Well, how were you going to get that oil out of the ground?

The Witness: I had the equipment.

The Court: You had the equipment?

The Witness: Yes.

The Court: And that is the equipment that was there when the Government took possession. Is that correct?

The Witness: Yes, sir.

The Court: Did you intend to use that same equipment?

The Witness: Sure.

Q. By Mr. Weymann: Mr. Block, you estimate the future production from that well at 10 years?

A. Yes, sir.

Q. Will you tell the jury, please, how you ar-

(Testimony of Sam Block.)

rived at a period of 10 years, rather than 20 or 15 or 5 or some other figure?

A. The reason why is I have got other wells in Venice that I have had for over 8 years, and it don't show any depletion whatsoever.

Q. Those wells that you refer to are not in this field? A. Just down the hill.

Q. But they are not in the Playa del Rey field?

A. Yes, it is all called the Playa del Rey field.

Q. Do they produce from the same zone, same horizon? A. That I don't know.

Q. So if they produced from another oil horizon they would not be comparable, would they?

A. I don't know that.

Q. But you merely estimated it at 10 years by reason of the fact that you had wells in the Venice field which had produced for 8 years?

A. Since I had them.

Q. Mr. Block, the production of that well which I believe you stated to be 25 barrels per day, did you file reports with the Division of Oil and Gas on your monthly production? [88]

A. I didn't personally, but my operator who worked on the wells, he turned it over to my accountant. Not personally I didn't take charge of that.

Q. You didn't operate the well yourself?

A. No; I had a man take charge of that.

Q. Did you examine those to see whether they were correct or not?

(Testimony of Sam Block.)

A. No, I really didn't, to be very frank with you.

Q. Then you are unable to say whether those reports truly reflected the production or not?

A. I do not.

Q. In stating a production of 25 barrels per day, are we to understand from that that includes only clean oil or total fluid? A. Clean oil.

Q. Do you know how much water was produced?

A. No, I didn't keep track of that. I left that to the operator.

Q. Do you know whether or not a substantial amount of water was produced?

A. It was making water, all right.

Q. It was making water?

A. It was making water, yes.

Q. And would that, in your opinion, affect the cost of production? [89] A. It costs more.

Q. It would cost more?

A. Cost a little more.

Q. The more water you raised in proportion to oil the more it would cost? A. Yes.

Q. You estimated the value of that by taking a figure of 94 cents per barrel. I believe you testified that you received 74 cents per barrel?

A. The first year.

Q. What did you receive at the time the government took it over?

A. Just about that, 75 cents.

Q. Why then, did you use a figure of 94 cents?

(Testimony of Sam Block.)

A. Because we got the raise right afterwards, in about a few months afterwards.

Q. Was that raise gotten before the government took it over or afterwards?

A. It was after the government took it over. I am not sure, but I think it is. I am not quite sure.

Q. You don't recall, is that your answer?

A. No, I don't quite recall.

Q. You testified that you paid approximately \$135.00 per month landowner's royalty, that is approximately?

A. By looking over the checks I just noticed that. [90]

Q. And if my arithmetic is correct, that would amount to about \$8.00 a per cent, is that right?

A. I guess so, if you figure it out.

Q. Then, the overriding royalty on the same basis would amount to approximately \$85.00 per month, is that correct?

A. I couldn't say that, because I didn't break it down.

Q. Did you keep any separate records?

A. Well, the government had it for over three years and the records some way or another we haven't been able to find. I have been looking for it.

Q. At the time you operated it?

A. We did keep a record at that time.

Q. And you are unable to say how much the overriding royalty was per month?

A. I am. I happened to look over the checks

(Testimony of Sam Block.)

that I paid that time the Hollywood Guarantee and I happened to notice it the way it ran for quite a few months that way, for six months or so.

Q. Mr. Block, didn't you keep definite records to ascertain whether or not the well was a paying well or not?

A. Well, the only record I have, Mr. Weymann, is at the end of the month I deduct my expenses and how much is left over every month; the first of the month we pay everybody off, and the end of the month from all the 10 wells whatever is left over.

Q. From all of the 10 wells together?

A. Together, yes.

Q. But you kept no separate record from this No. 10?

A. We kept records on every one of them, but I couldn't find the record from three years back.

Q. That is the three years in which you operated the well?

A. Three years ago I operated the well. It has been three years since the government had it.

Q. And you can't find the records from the last year of your operation?

A. I cannot. I was asking my man and he said he lost them.

Q. Will you make a further search, Mr. Block, and if you can find them, produce them in court?

A. I will try to.

Q. You mentioned something about putting in a vacuum system to increase the production of that well.

A. Yes, sir.

(Testimony of Sam Block.)

Q. Will you please explain to the jury just what that is?

A. That is a compressor vacuum——

Q. Talk to the jury.

A. It is a compressor vacuum right on the top of the casing, on the top of the floor, and I had it there, but only [92] my neighbors on all the wells surrounding me, they asked me not to use it because somehow they feel like it takes away some of their oil, you see, so to be neighborly I didn't use that vacuum. But I had it there, it was standing——when the government took it over it was there right on the well, but I didn't use it. But it can be produced 10 barrels a day, at least, more by using that vacuum.

Q. Would that be true if the adjoining wells also used a vacuum?

A. Maybe they did, I am not sure.

Q. Well, I mean if they had. In other words, to use a homely illustration, here is a glass of lemonade with a number of straws in it, and the one that can suck the hardest will get it first. Is that it?

A. Yes, that is right.

Q. What does a vacuum system of that kind cost, Mr. Block?

A. I think new it will cost, installing and everything, will cost \$1,000.

Q. \$1,000?

A. Yes, between the installing and everything.

Q. When you made this valuation to which you have testified, Mr. Block, so we can get this thing

(Testimony of Sam Block.)

clear in our own minds, was that the estimate of what the well was worth to you or what you thought a willing buyer would pay for it in the event that you were willing to sell it?

A. I never sold any wells.

Q. You never sold any wells?

A. I don't sell any wells.

Mr. Weymann: Will you read the question, please?

(Question read.)

The Witness: I never cared to sell any wells. I always [94] liked to buy them.

The Court: Just answer the question yes or no, and then you may explain your answer if it is necessary.

The Witness: I would say what it was worth to me.

Q. By Mr. Weymann: Then, the figures to which you have testified are based on what it was worth to you?

A. Yes, sir.

Q. Now, when you bought the Colly No. 1 and the Colly No. 2 wells, you bought the equipment which was in those wells at the same time, did you?

A. Yes, sir.

Q. And you paid a lump sum for both?

Mr. Dechter: To which we will object on the ground that it is immaterial how or under what system he bought the well. What might have happened in one case would have no bearing on the fair market value in the average case.

(Testimony of Sam Block.)

Mr. Weymann: It is a preliminary question, your Honor. I want to develop it further.

The Court: The objection is overruled, it being preliminary.

Q. By Mr. Weymann: Will you answer the question, please? A. What was the question?

Mr. Weymann: Will you read the question, please?

(Question read.) [95]

The Witness: Yes, sir.

The Court: Pardon me just a moment, Mr. Weymann. Mr. McLay has brought in the pads, I see. You may distribute one to each of the jurors, Mr. Welch, please. You may use those if you desire to make any notes regarding the evidence. It is difficult for you to keep all these figures in mind. That is the reason for giving you these pads.

You may proceed.

Q. By Mr. Weymann: When acquiring those wells, Mr. Block, did you receive an inventory or a bill of sale of the equipment that went with it?

A. Yes, sir.

Q. And since you acquired the well, have you added any equipment to it?

A. To some extent.

Q. Well, to what extent? What items?

A. For instance, when you are pulling a well, you got to add to it rods and tubing. They may have found some bad tubing in there and when we pull it we add to it a certain amount.

Q. How often did you do that, Mr. Block?

(Testimony of Sam Block.)

A. Sometimes twice a year.

Q. Sometimes twice a year, since you acquired the well?

A. Oh, yes. I pulled them several times.

Q. And how long would that take? [96]

A. Oh, it would take some time. If you can't get out, you got to wait sometimes two weeks.

Q. And you would have to replace the tubing with new tubing? A. Some times, yes.

Q. I see. Do you know whether the equipment which was in the well when you acquired it was new or secondhand equipment?

A. It was used.

Q. It was used equipment?

A. When I bought it.

Q. Do you know how long it had been used?

A. No, I don't.

Q. You don't know. Well, now, you testified in making your estimate of the production from that well on which you based the valuation, you estimated ten years or 3,650 days, that is, 365 days. You didn't make any allowance in that, did you, for down time for repairs, pulling tubing?

A. No, I did not.

The Court: Will you read the question and answer, please?

(Question and answer read.)

The Court: Down time?

Mr. Weyman: Time when the well was off production.

Q. Have you any opinion as to the value that

(Testimony of Sam Block.)

the [97] equipment would have at the end of the productive period?

A. If the O. P. A. would take the prices off, it would be more today than when I bought it.

Mr. Weymann: I move to strike that.

The Court: It may go out as not responsive.

Mr. Weymann: Will you read the question, please?

(Question read.)

The Witness: I do.

Q. By Mr. Weymann: And what would that be, Mr. Block?

A. It would have the same value as when I bought it with the exception of the engine.

Q. In other words, with the continued use of it, it would not depreciate in value?

A. No, it would not, with the exception of the engine.

The Court: Would you read the answer?

(Answer read.)

Mr. Weymann: Will you speak up a little louder?

Q. Mr. Block, are you familiar with the regulations of the Division of Oil and Gas on the abandonment of a well?

A. Yes. They give us instructions on it.

Q. They give you instructions? A. Yes.

Q. Do you know what they require?

A. Yes, I do.

Q. Will you tell the jury, please? [98]

(Testimony of Sam Block.)

A. I couldn't give you——

Mr. Dechter: That is objected to on the ground that it is incompetent, irrelevant and immaterial. The government isn't taking over an abandoned well. They are taking over a going well.

Mr. Weymann: It goes to the value of the leasehold estate because of the abandonment. We want to bring out that there are abandonment costs involved which have to be reckoned in figuring the valuation of the property.

The Court: Will you read the last two or three questions, please, Miss Reporter?

(Record read.)

The Court: The objection is overruled.

Mr. Dechter: I would like to make the further objection, your Honor, that it calls for a conclusion from the witness and is not the best evidence if it pertains to legal instructions.

The Court: I think that objection is good.

Mr. Weymann: May I be heard before the court rules?

The Court: Yes, you may.

Mr. Weymann: I believe this witness is qualified as an experienced oil operator, and it calls for the regulations of an administrative body.

The Court: I think the objection is good. Sustained.

Mr. Weymann: May we have an exception?

The Court: Yes.

Q. By Mr. Weymann: You testified, Mr. Block, as to the value per cent of the overriding royalties

(Testimony of Sam Block.)

and fixed that at \$600.00. You also stated that in valuations of oil royalties, overriding royalties varied, that some are higher than that and some are lower. Is that correct? A. Yes.

Q. What in your opinion makes that variation?

A. Well, it depends on the production of the well.

Q. It depends on the production. As to the amount of oil?

A. Yes, the price regarded by the production of the well and also there is no expense attached to royalties, you see. [100]

Q. You had at the time the government took it over, I think you testified, two 1,000-barrel tanks?

A. Yes, sir.

Q. And you used those to store the oil which you produced? A. Yes, sir.

Q. Those were necessary for the continued operation of the well, were they? A. Sure.

Q. And you also had a derrick? A. Yes.

Q. 122-foot? A. 122-foot derrick.

Q. In arriving at your valuation of \$22,400.00, I believe, what valuation did you place on those tanks?

A. Well, they overlooked to put them in the inventory altogether, you see.

The Court: I didn't hear the answer. Read it, please.

(The answer was read.)

Mr. Weymann: I move to strike the answer.

The Court: It may go out. Read the question.

(Testimony of Sam Block.)

(The question was read.)

The Court: Do you understand the question?

The Witness: I do.

The Court: Answer it. [101]

The Witness: \$1500.00 for both of them.

Q. By Mr. Weymann: \$1500.00 for each?

A. No; both of them. \$750.00 apiece.

Q. By Mr. Weymann: What valuation did you place on the derrick? A. \$4,000.00.

Q. Derrick, \$4,000.00? A. Yes.

Q. Do you know how much casing there was in the hole?

A. I would have to look at the inventory because I don't remember offhand.

Q. Well, what information as to that did you have before you when you arrived at this valuation?

A. The Union Oil Company made their own inventory and gave it to me.

Q. Did you take that estimate from the Union Oil Company's inventory? A. Yes, sir.

Q. Then what valuation did you place on the casing as shown by the Union Oil Company inventory?

A. Well, it is such a long inventory I can't recall each item separately, Mr. Weymann. I would have to look at it.

Mr. Dechter: I have no objection to counsel using their own exhibit, which is the inventory.

The Witness: O. P. A. prices, that I can tell you, Mr. [102] Weymann.

(Testimony of Sam Block.)

Q. By Mr. Weymann: I show you a copy of the Union Oil Company's inventory, and will you examine that and see if that will refresh your recollection.

Mr. Dechter: Is that the same as set forth in the exhibit?

Mr. Weymann: That is the mimeographed copy.

The Witness: What is the question?

Q. By Mr. Weymann: What valuation did you place on the casing?

A. Well, Mr. Weymann, we went through the O. P. A. prices on it; whatever at that time they allowed us to sell it for.

The Court: Can you tell that amount?

The Witness: I can't remember offhand.

The Court: All right.

Mr. Weymann: What is the answer?

(The answer was read.)

Q. By Mr. Weymann: What value did you place on the tubing?

A. 35 cents, it seems to me.

Q. 35 cents per foot?

A. Yes. That is seamless tubing.

Q. Now, those valuations which you have testified to, \$750.00 each for the tanks and \$4,000.00 for the derrick, and 35 cents per foot for the tubing, as of what date were those [103] values fixed by you?

A. I put them on on the day they mailed me the inventory, the Union Oil Company.

Q. And what date was that?

(Testimony of Sam Block.)

A. I don't recall the exact date, Mr. Weymann.

Q. Well, could you give us the date, approximately? A. It must have been in 1942.

Q. In 1942? A. Yes.

Mr. Weymann: I don't know, Mr. Dechter, but I don't believe that inventory was available at that time.

Mr. Dechter: Well, your own exhibit says, "Taken over by Defense Plant Corporation September 29, 1942."

Mr. Weymann: I don't want to mislead the witness.

The Witness: That must have been in '43, then. I don't remember exactly.

Q. By Mr. Weymann: Then you have no present recollection, have you?

A. No, I haven't, Mr. Weymann.

Mr. Weymann: I see. That is all, Mr. Block.

Redirect Examination

By Mr. Dechter:

Q. Mr. Block, what has been the normal operating cost for operating this well per month?

A. A couple of hundred dollars a month. [104]

Q. Did you have an arrangement with some oil operator to operate this well for so much a month?

A. Yes, sir.

Q. And how much was that contract cost that you had?

Mr. Weymann: Just a moment. That is objected to as irrelevant and immaterial. The cost of

(Testimony of Sam Block.)

the operation to this defendant may be entirely different from that of another party.

Mr. Dechter: I will withdraw the question.

Q. Mr. Block, are you familiar with what is the usual charge that is made in the Playa del Rey field for operating wells, looking after the operation of a well per month? A. Yes, sir.

Q. Do you know different operators who have looked after wells of others and made charges for that? A. Yes, sir.

Q. And do you know what the average charge is for that service? A. Yes, sir.

Q. And in your opinion on or about September of 1942, what was the fair and reasonable charge for the normal and ordinary operation of a pumping well like your well, Block Well No. 10?

A. \$50.00 a month.

Q. Would that charge include such extraordinary expenses [105] as pulling the well, or repairs, or things of that kind? A. No, sir.

Q. That is just for the normal and usual operation of the well? A. Right.

Q. And in addition to that you would have taxes and insurance? A. Yes, sir.

Q. And you would also have replacements from time to time? A. Yes, sir.

Q. Do you know whether the price of oil has been subject to regulation by the Office of Price Administration just like other commodities?

A. Yes, sir.

(Testimony of Sam Block.)

Q. And that applies to crude oil prices like crude oil produced from the Block Well No 10?

A. Yes, sir.

Q. In your opinion if there wasn't such restriction on the crude oil price would the market price of the crude oil as produced by Block Well No. 10 be higher or less than 94 cents a barrel?

Mr. Weymann: Just a moment, please.

A. It would be higher.

Mr. Weymann: Just a moment. That is objected to as being [106] purely conjectural and speculative and no proper foundation laid for it.

The Court: It has already been answered, Mr. Weymann.

Mr. Weymann: I move to strike the answer, then.

The Court: It may go out.

Mr. Weymann: May the jury be instructed to disregard the answer?

The Court: The jury is so instructed

Q. By Mr. Dechter: Mr. Block, do you have an opinion as to whether the price of crude oil would be higher or lower in the absence of O.P.A. regulations? A. It would be higher.

Mr. Weymann: May the answer go out, your Honor?

The Court: Let it go out. The jury is instructed to disregard it.

Q. By Mr. Dechter: The question is do you have an opinion as to whether it would be higher or lower? Answer it yes or no. A. I have.

(Testimony of Sam Block.)

Q. Answer yes if you have an opinion and if not, say no

The Court: He said I have.

The Witness: I have.

Q. By Mr. Dechter: Have you arrived at that opinion by discussions with other oil operators?

A. I did. [107]

Q. Have you arrived at that opinion by articles that have appeared in different oil and financial periodicals?

A. Yes, sir.

Q. Are you familiar with the hearings that have been conducted before the Congress of the United States?

A. Yes, sir.

Q. In connection with the price of crude oil?

A. Yes, sir.

Q. And in giving your opinion as to whether the price would be higher or lower you are basing it upon your own experience, your contacts in the oil business, and what you have read?

A. Yes, sir

Q. Now, I will ask you what is your opinion as to whether the crude oil price would be higher or lower than that fixed by the Office of Price Administration?

A. It would be higher.

Q. Are you familiar with whether the production of your well has increased or decreased since the Defense Plant Corporation took it over?

Mr. Weymann: I object to it as entirely immaterial. What happened to the well since the government took it over is entirely immaterial in that respect, because all sorts of conditions may

(Testimony of Sam Block.)

have intervened there which may have increased or decreased the production. [108]

Mr. Dechter: May I be heard?

Mr. Weymann: It is conceded this property was taken over for a natural gas storage reservoir, which would in the nature of things have a decided effect. The well may have been shut down, or other wells may have been shut down, so what happened after the government took it over would have no bearing whatever on the value.

Mr. Dechter: May it please the court, I think it has a material bearing for this reason: not only we, but the government are going to have witnesses on the stand to estimate the productive life of this well, and as to what the well would produce. Now, they are going to try to put themselves in the position as to the date when the government took the well over, but in arriving at that estimate they are merely projecting their own opinion as to what the production will be in the future; and here we have a situation where the government has operated the well for over two years, since it has taken it over, and it has a materiality in showing whether a projected estimated of the productive life of the well is in line or otherwise, and I think for that purpose it is material. I agree with counsel that the jury has to determine the fair market value in so far as the leasehold interest is concerned as of the date that the government took it over, but we have a situation here which isn't like potatoes or flour which

(Testimony of Sam Block.)

sells every day, or something that sells on an exchange—— [109]

The Court: I think you stated your position very definitely. I think before the court properly can rule on that question, though, and the objection, that you should lay some further foundation. Ask him as to his knowledge of whether it has been continued to be produced

Mr. Dechter: Very well, your Honor.

Q. By Mr. Dechter: Mr. Block, are you familiar, from your own knowledge, as to whether this well has continued to be produced after the date that the government took it over from you?

Mr. Weymann: We object to that on the ground that it is immaterial.

The Court: The objection is overruled.

Mr. Weymann: May we have an exception?

Q. By Mr. Dechter: Do you understand the question? A. I want to get it again.

The Court: Do you know whether or not the government has continued to produce oil from the Block Well No. 10 since the government took it over?

The Witness: Yes, sir.

The Court: You know that?

The Witness: Yes, sir.

Q By Mr. Dechter: You have been on the property and seen the well?

A. I pass by there every morning. [110]

Q. What is that?

The Court: For how long a period?

(Testimony of Sam Block.)

The Witness: For the last three years, since they took it over.

Q. By Mr. Dechter: And do you know of your own knowledge as to whether the production of the well has increased or decreased since the government took it over?

Mr. Weymann: Same objection.

A. Increased.

The Court: Read the question, please, Mr. Reporter.

(The question was read.) [111]

Mr. Weymann: I move to strike the answer for the purpose of an objection.

Mr. Dechter: No objection

The Court: Well, you make your objection and the court will consider it, Mr. Weymann:

Mr. Weymann: The objection is predicated on this ground, your Honor, that the condition of the operations of that entire field have entirely changed by reason of the injection program, that necessarily by reason of the injection there has been a gas drive. On other wells, it hasn't been shown whether other wells have been shut down, whether certain wells have been permitted to produce and whether certain wells have been shut down, all of which would have a definite and decided bearing on the production of any particular well.

The Court: I think it would be proper to bring that out on cross-examination. I think this answer may stand.

Mr. Weymann: May we have an exception then?

(Testimony of Sam Block.)

The Court: Yes, you may.

Q. By Mr. Dechter: Mr. Block, do you know of your own knowledge to what amount the barrels per day production of the well has been increased since the well was taken over by the government?

A. I do.

Mr. Weymann: May we have a general objection to this line of questioning? [112]

The Court: The same objection?

Mr. Weymann: Yes

The Court: It is overruled.

Mr. Weymann: Exception.

Q. By Mr. Dechter: And to what amount of barrels per day has the well increased, Mr. Block?

A. It is making now 55 to 60 barrels per day.

Q. Mr. Block, based upon your experience in the oil well equipment business, are you able to state whether the demand for second-hand or used oil well equipment in the years 1942 and 1943 was greater or less than the supply available of such equipment? A. I am.

Q. And what was that condition?

A. We couldn't supply enough for the buyers that we had for all kinds of pipe, casing, and equipment of all kinds.

Q And are you able to explain to the court and jury why the supply of used or second-hand equipment was insufficient to meet the demand during that time?

The Court: Well, is that important, Mr. Dechter, as to why it was?

(Testimony of Sam Block.)

Mr. Dechter: Well, it just gives the background, your Honor.

The Court: Well, is that necessary? We don't want to take up time unnecessarily. He stated the demand was greater [113] than the supply.

Mr. Dechter: I will withdraw the question.

Q. I will ask you if it isn't a fact that during the years 1942 and 1943 major oil companies who previously very seldom purchased used equipment were in the market for large amounts of used or second-hand oil equipment? A. Yes, sir.

Mr. Weymann: That is objected to as calling for a conclusion.

The Court: The objection is sustained. The answer may go out.

Q. By Mr. Dechter: Well, are you familiar of your own knowledge as to whether major oil companies were buying used or second-hand equipment in large quantities? A. I am

Q. Have you bought tubing and rods and casing from wells that have been operated for long periods of time? A. I have.

Q. And has that equipment that you bought from wells that have been operating from eight to ten years been in good workmanlike condition?

A. Yes, sir.

Q. Now is it or is it not a fact that it is common practice in the oil industry for oil well equipment like derricks, tubing, rods and casing to be moved from one well to [114] another?

A. Yes, sir.

Mr. Dechter: That is all.

(Testimony of Sam Block.)

Recross Examination

By Mr. Weymann:

Q. Mr. Block, you testified that production of Block's Well No. 10 increased from 55 to 60 barrels a day after the government took it over?

A. From 25 it was 55 and 60.

Q. On what do you base that conclusion?

A. It is a secret that I don't want to give out.

The Court: Will you read the question and answer?

(Question and answer read.)

The Court: You answer the question. You volunteered the information and it was brought out by your attorney on redirect examination, so just answer the question.

A. I got some figures from the Triangle Oil Company where they sell the oil.

Q. By Mr. Weymann: Is that the sole basis of your information? A. Yes, sir.

Mr. Weymann: I move to strike the defendant's testimony as being entirely hearsay.

The Court: It may go out. [115]

Mr. Weymann: May the jury be instructed to disregard it?

The Court: The jury is instructed to disregard all the evidence which the court orders to go out or to be stricken.

Mr. Dechter: I might state, your Honor, that I have subpoenaed the records of the Union Oil

(Testimony of Sam Block.)

Company for that production, and they will be here exactly as to the amount of value.

The Court: That is a matter that may be presented at the proper time, Mr. Dechter.

Q. By Mr. Weymann: The \$50.00 a month operating charge, that is a charge for a pumper to take care of the well? A. Yes, sir.

Q. So that I may not misunderstand you, Mr. Block, that does not include the cost of power?

A. No.

Q. Which is an additional charge.

The Court: Does it include any oil that is necessary to use?

The Witness: Nothing. It is just for looking after the well.

The Court: The services of a pumper in looking after the well?

The Witness: That is right, your Honor.

Mr. Weymann: That is all.

Mr. Dechter: That is all.

The Court: You are excused, Mr. Block. [116]

Mr. Dechter: I will call Mr. Rubin.

ABRAHAM RUBIN,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Abraham Rubin.

(Testimony of Abraham Rubin.)

Direct Examination

By Mr. Dechter:

Q. Mr. Rubin, what is your business?

A. I am in the oil well supply business and oil business.

Q. How long have you so been engaged?

A. In the oil well supply business for 15 years, and the oil business about a year and a half.

Q. Where are you employed?

A. In Southern California and in Central California.

Q. And during that time you have become familiar with the prices asked and received for oil well equipment, machinery and supplies?

A. Yes, sir.

Q. And do you know what that type of personal property has sold for? [117]

A. Yes, sir.

Q. And you have heretofore been shown this inventory of personal property which is a part of Exhibit C of the amended complaint contained on pages 1, 2, 3 and 4 of Block's Oil Company Well No. 10?

A. Yes, I have seen a similar list.

Q. And you have been asked to look it over for the purpose of giving an opinion as to the fair market value of that personal property?

A. Yes, sir.

Q. And have you formed such an opinion?

A. Yes, I have.

Q. And what in your opinion was the fair and reasonable market value of that personal property?

(Testimony of Abraham Rubin.)

Mr. Weymann: Just a moment, please.

Mr. Dechter: As of——

Mr. Weymann: Pardon me. I am going to have an objection before the question is asked.

Mr. Dechter: As of October of 1943.

Mr. Weymann: I object to the question as incompetent for two reasons. In the first place the date of the valuation is not of October, 1943; on the second ground that the property taken is to be valued as a whole, as a unit, and that it is improper to introduce evidence of separate elements which go to make the valuation of the entire property taken. [118]

The Court: You make no objection then, Mr. Weymann, that the date of January 12, the filing of the amended complaint, is not used in any way?

Mr. Weymann: No. I make no objection to that. I make objection, of course, to the date of October, 1943.

The Court: Yes. Your position is that it should be September 28, 1942?

Mr. Weymann: Yes, of the valuation of that property as a whole without separate valuation of any of the elements that go into it.

The Court: The objection is overruled.

Mr. Weymann: May I have an exception, please?

The Court: Yes.

The Witness: Do you want the answer in dollars and cents?

Mr. Dechter: Yes.

(Testimony of Abraham Rubin.)

The Witness: I don't remember the exact total, but I went over those figures at that time and it seemed to me it was over \$22,000. I can't give you the exact figure.

Q. By Mr. Dechter: It was about \$22,000?

A. Yes, over \$22,000 was the total as near as I can recall.

Q. At that time was there an O.P.A. ceiling on most oil well equipment, machinery and personal property?

A. The O.P.A. ceiling price came in October 2, 1943, I [119] think it was.

Q. The question is, was there an O.P.A. ceiling price on oil well supplies, machinery and equipment in October of 1943? A. Yes, there was.

Q. And was that O.P.A. price on both new and used equipment?

A. On used equipment. New equipment was priced, naturally. The ceiling price was on used equipment.

Q. Do you know what the difference was in the ceiling price on used equipment and the new prices on the same type of equipment? A. Yes, I do.

Q. What was that difference?

A. Roughly about 15 per cent.

Q. In October of 1943 was the demand for used oil equipment greater than the supply?

A. Yes, sir.

Mr. Weymann: May we have an exception to all questions along this line?

The Court: Now, Mr. Weymann, I think to

(Testimony of Abraham Rubin.)

make an objection now such as that would not quite reach the question which is now before the court or before the witness for his answer. I have no objection if it is agreeable to Mr. Dechter that it be understood that your general objection is to go to [120] all of these questions.

Mr. Weymann: That is the purpose of the objection.

Mr. Dechter: I will so stipulate, your Honor.

The Court: Yes. The general objection you made that you referred to heretofore?

Mr. Weymann: That is correct. I simply don't want to be objecting to every particular question.

The Court: I think that is very proper, but I want to be sure it refers only to the general objection.

Mr. Weymann: To the general objection, that is correct.

The Court: The objection is overruled.

Mr. Weymann: Exception, please.

Mr. Dechter: Will you read the last question and answer, Miss Reporter?

(Record read.)

Q. By Mr. Dechter: Are you familiar with the Block Well No. 10 in the Playa del Rey field?

A. Yes, sir.

Q. You have seen that well in operation?

A. Yes, sir.

Q. And you have had experience in buying oil wells?

A. Yes, sir.

Q. And in selling oil wells?

A. Yes, sir.

(Testimony of Abraham Rubin.)

Q. And as of September 28, 1942, do you have an [121] opinion as to what the fair market value of the oil and gas leasehold owned by Mr. Block embracing this producing oil well and subject to a landowner's and overriding royalty of 30 per cent, assuming that said well was producing or capable of producing at or about that time approximately between 20 and 25 barrels of oil per day?

A. I have.

Mr. Weyman: That is objected to as incompetent, and no proper foundation laid. The witness has not been qualified.

The Court: I think that objection is good as to his qualifications.

Q. By Mr. Dechter: Over what period of time have you bought and sold wells, Mr. Rubin?

A. Producing wells for the last year and a half.

Q. Prior to that time had you been familiar with what oil wells sold for and what people were asking and receiving for them?

A. Yes, sir.

Q. And in arriving at an opinion as to the fair market value of this Block's well, have you taken into consideration what your knowledge has been of the oil business as to what people have asked for and received for oil wells?

A. Yes, sir.

Q. And in giving your opinion you are basing it on what you learned from your experience in the oil business? [122]

A. Yes, sir.

Q. You have also operated oil wells yourself?

A. Yes, sir.

(Testimony of Abraham Rubin.)

Q. And also for others? A. Yes, sir.

Q. Now, do you have an opinion as to the fair market value of the oil and gas leasehold owned by Mr. Block?

Mr. Weymann: I renew my objection.

Mr. Dechter: Pardon me, may I finish?

Mr. Weymann: I am sorry.

Mr. Dechter: Subject to a landowner's and overriding royalty of 30 per cent and capable of producing between 20 and 25 barrels of oil per day. All right, Mr. Weymann.

Mr. Weymann: I renew the objection on the same ground. The witness is still not qualified to express an opinion of the value of the Block oil well.

The Court: He is merely asking him if he has an opinion. He may answer that yes or no.

The Witness: Yes, I have.

Q. By Mr. Dechter: And what is your opinion as to the fair market value of such leasehold and well as of September, 1942?

Mr. Weymann: I renew the objection, if the court please, on the same ground. The witness is unqualified to testify to the fair market value of Block's oil well. [123]

The Court: I think the objection should be sustained.

Mr. Dechter: Unless the court cares to hear from me, I believe the witness has testified he has had experience in buying and selling wells. It might go to the weight of his testimony, not to the admissibility. I think I have qualified him sufficiently.

(Testimony of Abraham Rubin.)

The Court: Well, he has only been in the business for a year and a half, and this other statement about his talking with other people, in the opinion of the court the foundation is inadequate. The objection is sustained.

Mr. Dechter: Very well. You may take the witness.

Mr. Weymann: No cross-examination.

Mr. Dechter: You may step down. I will call Mr. Crown.

WALTER J. CROWN,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Walter J. Crown.

Direct Examination

By Mr. Dechter:

Q. Mr. Crown, what is your business?

A. I am a consulting petroleum engineer. [124]

Q. How long have you so been engaged?

A. One year.

Q. And prior to that time, what was your business or occupation?

A. I was petroleum engineer with the State of California Division of Oil and Gas for 16 years.

(Testimony of Walter J. Crown.)

Q. You were connected with the Division of Oil and Gas for 16 years? A. Yes.

Q. As a petroleum engineer?

A. Yes, as a petroleum engineer.

Q. Prior to that time, what was your occupation or profession?

A. I worked for two years for Standard Oil Company in the general oil fields work, plus engineering.

Q. And prior to that time, what was your occupation?

A. I mined for a year in southern Nevada.

Q. And prior to that time, what was your profession and occupation?

A. I worked for Empire Gas & Fuel in geology in Kansas.

Q. Empire Gas & Fuel Company is one of the major oil companies on the mid-continent?

A. Yes, that is correct.

Q. How long were you with them?

A. That was just a short time, roughly about six [125] months after I got out of school.

The Court: Out of where?

The Witness: The university.

The Court: Where did you go to college?

The Witness: Ohio State University.

The Court: Were you graduated from there?

The Witness: That is correct, yes.

The Court: What year?

The Witness: 1923.

The Court: You majored in what?

(Testimony of Walter J. Crown.)

The Witness: Geology.

The Court: Go ahead, Mr. Dechter.

Q. By Mr. Dechter: In your work with the Division of Oil and Gas, did you practice petroleum engineering and geology? A. I did.

Q. Are you familiar with the Block Well No. 10 in the Playa del Rey? A. Yes.

Q. And have you been asked to make an appraisal on that well so as to give an opinion in this court? A. Yes, sir.

Q. And did you make such an appraisal?

A. I did.

Q. Are you able to give this court an opinion as to the [126] fair market value of the leasehold embracing Parcels 87 and 103, on one of which parcels is located a producing oil well known as Block Well No. 10, subject to a landowner's and overriding royalty of 30 per cent—

The Court: Don't you think you should state the gravity of the oil and the amount of production?

Mr. Dechter: —and producing approximately 20 to 25 barrels of oil per day of 19 gravity oil?

The Witness: Was that question did I prepare a report of that kind?

Q. By Mr. Dechter: No. Do you have an opinion as to the fair market value? A. I do.

Q. What is your opinion as to the fair market value of that leasehold and well as of September of 1942?

(Testimony of Walter J. Crown.)

A. I placed the value of the future production from that well at——

The Court: Oh, no, Mr. Crown. You are answering something besides the question that was asked you [127]

Q. By Mr. Dechter: You just give us your opinion as to the value. We will go into the reasons afterwards. You testified you have an opinion as to what the fair market value was. Now, give us what that opinion is without giving us your reasons at this time.

A. Approximately \$11,000.00.

Q. Does that include the personal property and the fixtures located on the leasehold?

A. It does not.

Q. That is just for the oil and gas leasehold and the oil under the leasehold?

A. That is correct.

Q. In arriving at that particular value, have you taken into consideration any value for the suitability or availability of this property as a gas reservoir? A. I did not.

Q. Do you have an opinion as to whether this property on or about September, 1942, was available for use as a gas reservoir?

A. I am not sure that I understand that question.

Mr. Dechter: Will you read that question?

(The question was read.)

The Witness: Yes.

(Testimony of Walter J. Crown.)

Mr. Weymann: Pardon me a moment. Is the answer to that question—— [128]

The Court: That he has an opinion.

Q. By Mr. Dechter: And do you have an opinion as to whether on September, 1942, there was a demand or need for a gas storage reservoir such as the Playa del Rey field?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial.

The Court: It appears to the court that the objection is good, Mr. Dechter.

Mr. Dechter: Your Honor, apparently most of these witnesses have merely given an opinion as to value of the property based solely on its use as an oil well. Now, the government has taken over this field not for the use as an oil well, but for use as a gas reservoir or gas storage project. Now, it is my contention that there was a great need in Southern California for such a project, considering the peculiar situation that we have here every winter of there being a shortage of gas when the cold weather is in existence, and I think under the rules announced by the cases that there should be taken into consideration all available uses that the property may be put to, not just the use that it is being put to. In other words, an owner may only use property for pasture purposes, but it may be valuable for a much higher use. That is my purpose.

The Court: Well, do you want to bring this out as to its highest and best use? [129]

Mr. Dechter: Yes, that is my purpose.

Mr. Weymann: May I be heard on that, if the court pleases?

I think it is fundamental that the use to which the condemnor puts this property or can put the property is no criterion whatsoever as to the value of the property at the time it was taken. Moreover, the property which this defendant owned and which is taken is a leasehold estate for the purpose of producing oil and gas; the only use to which it could have been put by the defendant under his right, under his lease, is that use to which it was put. So, any evidence or any speculation as to what use the condemnor or any one else may put the property to is entirely without the realm of conjecture or opinion as to what use the property may be put to.

Mr. Dechter: I agree with Mr. Weymann that the use to which the condemnor should put the property should not enter into the valuation; in other words, any increment or increase in the value of the property by reason of what the condemnor does after it acquires it would not be pertinent. But if the condemnor takes over a piece of property which is available for certain use, and thereafter puts it to that use, it certainly is competent under the cases to bring out what that use is, just like those cases, that long line of reservoir cases in California, where property in San Diego and up in the San Joaquin Valley was just being used for grazing land, but they [130] happened to be so situated that they could also be used for a reservoir,

and the court permitted, in those cases, a value to be put on of what the highest use would be which in that case was a reservoir.

The Court: Do you have any of those cases at hand?

Mr. Dechter: Yes, your Honor. They are among my instructions, and I will give them to you. The cases cited under Instruction No. 7, No. 8. The leading cases on that point are *San Diego v. Neale*, which is noted under Instruction No. 7, 88 Cal. 50, *Spring Valley Water Works v. Drinkhouse*, 92 Cal. 528.

The Court: Well, they are all under those two instructions, are they?

Mr. Dechter: Yes. And then there are some other cases. *City of Stockton v.*—

The Court: Are they under the same instruction?

Mr. Dechter: Instruction No. 9.

The Court: What have you to say about that, Mr. Weymann?

Mr. Weymann: I believe a preliminary question would probably settle the whole proposition. Whether or not this property could be used as an oil reservoir alone or in conjunction with other property.

The case of *United States v. Olsen*, I haven't the citation here with me, is decisive on that point, that no additional valuation can be placed upon the property for use as a reservoir [131] or a dam site merely because of the possibility of its aggregation with other property.

The Court: What is that citation?

Mr. Weymann: United States v. Olsen. I will send for that.

The Court: What is the citation?

Mr. Weymann: United States v. Olsen.

The Court: Don't you know the volume number?

Mr. Weymann: I haven't it, but I will send for it.

Mr. Dechter: I can give you that citation. 292 U. S. 246 at 255. It is found in my Instruction No. 14b. And that case is construed in a later case which is cited in Instruction 14b, the case of United States v. Powelson, which is cited there, and it construes the Olsen case.

The Court: The court would like to have you discuss this matter in the absence of the jury, and I think it will take some time, so the court will excuse the jury now until tomorrow morning at 10:00 o'clock.

The members of the jury are now excused from attendance upon the court. You will return tomorrow morning at 10:00 o'clock.

Bear in mind the admonitions of the court heretofore given you. That is, that you are not to converse among yourselves or suffer yourselves to be addressed by any person on any subject connected with the trial, and you are not to form [132] or express any opinion thereon until the cause is finally submitted to you. You are now excused. Return tomorrow at 10:00 o'clock. Court will recess for a few minutes.

(A recess was taken.)

(The following proceedings were had in the absence of the jury:)

The Court: Mr. Dechter, if you will make a concise statement of your position and refer to your authorities.

Mr. Dechter: Yes. My position, your Honor, is that we are entitled to show the different uses to which the property may be put, and particularly the highest and best use; and while market value might not be based upon any particular use, it does permit evidence to be introduced as to the various uses and what the highest and best use is, and for the expert to take that into consideration in giving his market valuation.

In this recent case of *United States v. Powelson*, 87 Law. Ed. 1390, quoting the court at 1397 and 1398 verbatim, that is Instruction 14b. That instruction is taken word for word out of that particular case. The court says: "An owner of land——"

The Court: Wait just a moment.

Mr. Dechter: The court says:

"An owner of lands sought to be condemned is entitled to their 'market value, fairly determined.' [133] * * * That value may reflect not only the use to which the property is presently devoted but also that use to which it may be readily converted." Citing different cases. "In that connection the value may be determined in light of the special or higher use of the land when combined with other parcels; it need not be measured merely by the use to which the land is or can be put as a separate

tract. * * * But in order for that special adaptability to be considered, there must be a reasonable probability of the lands in question being combined with other tracts for that purpose in the reasonably near future. * * * In absence of such a showing, the chance of their being united for that special use is regarded 'as too remote and speculative to have any legitimate effect upon the valuation.' "

In this particular case there was a divided court, a five to four decision, and the majority court held that the particular use that the defendant was trying to show the property would be adapted to was too remote, because the only way it could be done would be by condemnation. The dissenting judges held that in itself was not a drawback or deterrent, and the court should have permitted the instruction to be given. I think the evidence was received and the instruction was given to the jury.

The first part of the language I read is almost exactly the same language that is used by our California cases. For example, in *San Diego v. Neale*, 78 Cal. 59, defendant's Instruction 11: "You are instructed that in fixing market value——"

The Court: Let me find that now. Your Instruction 11?

Mr. Dechter: Yes.

The Court: Go ahead.

Mr. Dechter (reading): "You are instructed that in fixing the market value of the property of the defendant taken by the United States, you should consider the highest and best use to which the property is suitable, having regard not only to the

existing business or wants of the community but also those that may reasonably be expected in the immediate future.”

Now, there has been an existing want in this community for a gas storage project almost for the last 10 years, ever since Los Angeles has grown to the size that it has, and there has always been a curtailment of gas to industrial uses in order to supply domestic uses.

In Instruction No. 9 we cite the case of the City of Stockton v. Ellingwood, 96 Cal. App. 708. That is a very exhaustive case, and the court in that case goes into all the previous cases and also cases outside the State. The court [135] there says:

“Market value is the price in terms of money which the property will bring if offered for sale in the open market with a reasonable time to find a purchaser buying with full knowledge of all the uses and purposes, including the highest and best purpose to which it is adapted or for which it is capable of being used; and in ascertaining the market value of the properties taken in this proceeding for public use, you should consider all of the purposes, including the highest and best purpose for which the land is adapted and the price for cash it would bring on the 28th day of September, 1942 for any such purposes, allowing a reasonable time to find a purchaser.” In Instruction No. 10, line 4:

“The inquiry in such cases must be: what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time

applied, but with reference to the uses to which it is reasonably adapted—that is to say, what is it worth from its availability for valuable uses?”

I might state, your Honor, that only recently the Pacific Lighting Corporation by private arrangement, not by condemnation, acquired the right to the Golita oil field for the purpose of using that as a gas storage reservoir for the [136] purpose of supplying the communities around Santa Barbara and Ventura. And I understand the Standard Oil Company has been using the Rio Vista field in the San Joaquin Valley for the same purpose.

Under Instruction No. 7, the cases cited there are the cases that are cited most often in California on condemnation cases. It is said:

“What is the property worth in the open market, viewed not merely with reference to the use to which it is at the time applied, but with reference to the uses for which it is adapted; that is to say, what is it worth from its adaptability for all uses, having regard to the existing wants of the community and such wants as may be expected in the immediate future, and in this connection you may take into consideration all of the uses for which the property is adaptable, including its particular fitness for particular purposes, when such evidence of such purposes forms a factor in determining the market value.”

In addition to gas being used in these fields for the purpose of storing gas in recent years there has been adopted a system of gas drive or repressuring of oil fields where gas is brought in for the

purpose of replacing the propulsive force that was there originally when the gas was not seriously diminished in forcing the oil to the surface, and in this [137] particular case it is our contention that this gas reservoir serves a double purpose: It serves a purpose of storing the gas and getting it out when you need it in the winter, and at the same time it serves the purpose of getting out more gas and getting out more oil because the greater the gas force you have the more oil you are able to extract. There is something else that I understand. Not every field can be adapted as a gas storage reservoir, and in this particular area Playa del Rey is probably the only one, or one of the few fields that can be used for that particular purpose.

Mr. Weymann: If the court please, I agree thoroughly with Mr. Dechter's statement that gas drive through the injection of the gas tends to increase the production of oil and gas for these wells.

The Court: You are speaking of repressuring now?

Mr. Weymann: Yes, repressuring. This is one of those peculiar situations where the instruction with regard to the highest and best use is not applicable, in our opinion, for several reasons.

I am entirely in accord with Mr. Dechter's statement of the law generally, but I contend that it isn't applicable to this case.

The Court: Let me see if I get your position clearly. It is that the general rule is that the

property may be valued as to its highest and best use, is that correct? [138]

Mr. Weymann: That is correct.

The Court: But that does not apply to this situation because of some peculiar circumstance?

Mr. Weymann: That is correct.

The Court: Very well. Now, will you explain why?

Mr. Weymann: There are two circumstances. In the first place, the condemnee here is not in the position of the owner of the land who may put the land to any use. That is, one owning the land in fee simple may put it to any lawful use.

We have to bear in mind that Mr. Block's property here was a limited and special use; that the only right he had in that land was to use it for the production of oil and gas.

To take an analogy, suppose Bullock's store building at the corner of Broadway and Seventh was condemned, and assuming that Bullock's had a 99-year lease on that property for store purposes and was entitled to part of the condemnation for the taking of its lease. Now, assuredly, Bullock's would not be entitled to have considered as the valuation of its lease a possible use for hotel purposes or for some use not permitted by the terms of its lease, because that is excluded from the nature and quality and limitation of the estate which Bullock's owns.

Now, Mr. Block is entirely in the same situation. He has no right under the terms of his lease to use it for a gas storage reservoir or for any purpose other than the production of gas and oil. I cited

to the court the case of *Olson v. United States*, which seems to me to be controlling in this instance.

The Court: Mr. Welch, will you get me 292 U. S., please?

Mr. Weymann: There, a number of parcels of land was sought to be condemned, and one of the defendants claimed compensation for the use of the property for reservoir purposes, and it there appeared that the property could be used for that purpose only in connection with other land. The court cites *Nichols on Eminent Domain* and says:

"The fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value. Nor does the fact that it may be or is being acquired by eminent domain negative consideration of availability for use in the public service." Citing cases. Then, further down on page 256:

"But the value to be ascertained does not include, and the owner is not entitled to compensation for any element resulting subsequently to or because of [140] the taking. Considerations that may not reasonably be held to affect market value are excluded. Value to the taker of a piece of land combined with other parcels for public use is not the measure of or a guide to the compensation to which the owner is entitled."

Then, the court concludes on page 257, about two-thirds of the way down:

"Elements affecting value that depend upon event

or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration, for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value—a thing to be condemned in business transactions as well as in judicial ascertainment of truth.”

Now, we have here a situation where the government has taken Mr. Block's property to use as a gas storage reservoir in combination with other property. I think the court may take judicial notice of the fact that unless the subject property is by nature of the structure underlying the property constituting a separate reservoir, that where there is a free passage and interflow of the fluid and the gas beneath the surface, this couldn't possibly be used as a gas storage [141] reservoir except in combination with other property. So, the very physical condition of the property precludes its use apart from other property taken in condemnation.

The Court: That does not appear yet, Mr. Weymann.

Mr. Weymann: It does not appear, if the court please, that is possible.

The Court: Well, I know, but you are making the affirmative statement that it appears that it couldn't be used.

Mr. Weymann: Well, I suggest——

The Court: So far as the court is concerned, it doesn't know whether or not this well is a separate

well and is shut off by some fault or by some arrangement of nature so that it is entirely impervious to outside pressure and that it would be protected from the inside pressure. I don't know. There is nothing in the evidence to indicate it yet.

Mr. Weymann: Well, in that event it would seem that a proper foundation to show that should be laid before any evidence of possibility of its use and the value of such use should be permitted to go into evidence.

The Court: Well, now, it may be necessary for a further foundation, but also this matter can't all be proved at one time, and the parties have to present their evidence just as it should be presented, not necessarily present the whole background at one time, but a piece at a time, piecemeal, you might say. [142]

Mr. Weymann: And then, of course, there is the objection that I referred to in the first instance.

The Court: Yes, the first instance. That is as to the nature of this particular interest, the leasehold interest.

Mr. Weymann: Yes, the leasehold interest.

The Court: Well, let's hear what Mr. Dechter has to say about that.

Mr. Dechter: On that point I asked Mr. McLay if I could borrow Mr. Weymann's copy of the main lease, and with Mr. Weymann's permission I would like to read the following into the record from it. Is that agreeable?

Mr. Weymann: Is that the main lease?

Mr. Dechter: That is your copy.

Mr. Weymann: Yes. There is no question about it.

Mr. Dechter: I will read it into the record:

“That the Lessor, for and in consideration of Ten Dollars (\$10.00), in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the Lessee to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise, lease and let unto the said Lessee exclusively, for the purpose of exploring, mining and operating for oil, gas and casing-head gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products [143] therefrom, with the right for such purposes to the free use of oil, gas or water from said land, but not from Lessor’s water wells or ponds, and granting the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as may be necessary or convenient in its operations, together with rights-of-way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing whether during or after the term hereof, any and all improvements, placed or erected on the premises by Lessee, including the right to pull all casing, on all that certain tract of land situated in the County of Los Angeles, State of California, described as follows.”

Then follows the description which includes these parcels.

Now, the court will observe particularly this language:

“Taking, storing, removing and disposing of same,”

which refers immediately in the previous clause to oil, gas and casinghead gas, and other hydrocarbon substances. Now, that is exactly what is being done right now by the Union Oil Company. In other words, they come along during the summer months and they inject this gas in certain non-producing wells. They produce a certain number of wells including the [144] Block well in the regular manner. In the winter months when they need the gas what they do is put the return flow on the wells in which they injected the gas, and they take out the gas that they put in. In other words, they get back the gas that they put in, and they get back the oil that they would have produced and more, and get back additional gasoline, and this is exactly within the purposes of this particular lease.

In other words, if this lessee and the other lessees got together, they could have made a contract with the Southern California Gas Company, for instance, taking all the gas needed to operate the gas for the Southern California Gas Company and return that gas and have the benefit of the increased flow of oil and increased gasoline from that operation.

Now, I agree with your Honor on the second point, that it doesn't go to the admissibility. It goes to the weight of the evidence. If after the evidence is in the court should feel that there was

no likelihood of any need for a gas storage project, that the wants of the community didn't contemplate anything like that in the near future, and this was something extraordinary that came only from governmental use which would never have arisen otherwise, if the court should feel from the evidence that it was that improbable the court would have the right to instruct the jury to disregard the evidence and make an instruction not to take that into consideration. But I don't believe it goes to the admissibility, under the case that I gave your Honor, which construes the Olsen case, in 14b.

In read the qualifying language. In other words, if the court should find that the use is such that it cannot be presently devoted to or readily converted to, then the court may disregard it. But the court specifically points out the mere fact that one parcel by itself may not be availed of for its higher use and can only be so availed of by a combination doesn't detract from a consideration of that use, unless it is shown there is no reasonable probability that the lands in question could be combined with other tracts for that particular purpose.

I believe under this particular lease the gas storage [146] project and repressuring proposition would certainly be within the contemplation of the parties and for both the benefit of the lessor and lessee.

Mr. Weymann: That seems to be an ordinary oil and gas lease, if the court please. I don't think the fact that it provides for storage of the gas produced and stored by any stretch of the imagination

contemplates using that property for a gas storage reservoir. I don't believe it can be so construed, because the language is that of an ordinary oil and gas lease.

I think Mr. Dechter revealed the fatal defect in his whole position when he said that possibly the owners of these various properties might have gotten together to convert this into a gas storage reservoir. That is a possibility, but it is so remote and so conjectural that under the Olsen case it would seem to me the court has specifically passed on the inadmissibility until it is shown. The burden is not upon the plaintiff to show it is impossible or improbable. But in view of the physical elements involved there it would seem to me any such use is clearly inadmissible, and the lease by no means, as I interpret it, involves the use of this property for gas storage purposes. It involves the use of it for the purpose of producing oil and gas. Necessarily, it must be stored until it is sold; but it doesn't mean using the underground sands to inject gas and to store them, except inject it [147] for the purpose of a gas drive.

The Court: Well, if it is injected for any purpose and it is stored, wouldn't it meet that requirement of storage, or wouldn't it come within the definition of storage?

Mr. Weymann: I don't think it contemplates storing below the surface in the gas sands; I believe that storage applies to storage of the gas in the tanks awaiting its disposition. They need not dispose of it immediately but may store it in the tanks.

That, I believe, is the interpretation of that language. But the operation of a gas storage reservoir is something quite different.

The Court: Mr. Weymann, the government is taking this for a reservoir and it is storing gas there until it is needed.

Mr. Weymann: That is correct.

The Court: If a well is repressured, then there is a restoration of the gas in the well; that is correct, is it not?

Mr. Weymann: That is correct. [148]

The Court: If you store it, repressuring may result, I take it?

Mr. Weymann: If you store it in the oil bearing sand.

The Court: That is right, and that is what is being done now?

The Court: So whether it was intended for repressuring or not, it results in repressuring. I am asking you these questions and making these statements with as much knowledge as I have or can get from the statements of the attorneys, but if I am wrong I want you to enlighten the court.

Mr. Weymann: I appreciate that.

The Court: If it is placed there for storage, it may result in repressuring. If it is put in there for repressuring, it may be the same as storage?

Mr. Weymann: I don't quite follow the court in that last statement because it is put in there for two entirely different purposes.

The Court: But I mean it acts as a storehouse for the gas just the same?

Mr. Weymann: Well, if it is put in for repressuring, it is constituting a gas drive and circulates out. It can't be.

The Court: But it doesn't have any repressuring effect until the cavity is filled? [149]

Mr. Weymann: Until the pressure is brought up.

The Court: So that is the storage of gas, it seems to the court.

Mr. Weymann: That is right.

The Court: I am just trying to figure this out as much as I can in order to arrive at a proper conclusion.

Mr. Weymann: But may I point out the essential difference between storage for storage basin and storage for repressuring? If the property is used as a gas storage reservoir it may become necessary to shut down the wells and not produce them at all in order that the stored gas may be conserved and kept there.

The Court: Well, now, that is the thought that occurred to the court. Mr. Dechter has stated that they are operating wells and using it for storage at the same time.

Mr. Weymann: They are operating some of the wells, but they have shut down——

The Court: I am talking about this particular well.

Mr. Weymann: Well, that may be. I don't know, but that all depends on the mechanics of the operation.

The Court: Well, now, I just want to try and get this information, and there is no jury here. Now,

ordinarily when a lease is entered into for a production of oil and gas, it is for the purpose of producing it as long as it is available at a profit. That is, it can be produced at a profit, and the [150] purpose between the lessor and the lessee is to get the gas and oil out of the ground and the lessee is to pay a royalty to the lessor?

Mr. Weymann: That is correct.

The Court: Then, if there is nothing done here except using the well for storage, it seems to the court there would be no pecuniary advantage to the lessor.

Mr. Weymann: There would not be.

The Court: That is, he would get nothing out of it.

Mr. Weymann: That is right.

The Court: He is getting nothing out of it. That is the thought that occurred to me because Mr. Dechter stated that the Union Oil Company was doing this very thing now, that it was used for the purpose of storing gas and at the same time it was producing oil.

Mr. Weymann: The production of gas is an incident. It is incidental production.

The Court: So, it might be then, if that is the case, that the lessee having the right of storage could perform its lease by producing and at the same time have a reservoir there for storage.

Mr. Weymann: I don't see how that can be.

The Court: Well, I don't know. Mr. Dechter said that is what they are doing.

Mr. Weymann: Well, of course that is not the

fact as I [151] understand it. The property is being used for the injection of gas. It is stored there for a period of months. Certainly there is a residue of oil in the structure that may be produced from one well or another. One well may be shut down and another opened up. It all depends on the pressure in the hole, so that in other words the oil produced is a by-product.

The Court: Well, now Mr. Weymann, are you familiar with the status of that oil well now and what it has been since September of 1942?

Mr. Weymann: Oh, yes, I have the records.

The Court: Do you say that Mr. Dechter is incorrect in his statement that they are using it for storage and they are producing at the same time?

Mr. Weymann: He is correct in the statement that they are producing it, but I can't answer the question that they are using it for storage because they are using the entire field for storage.

The Court: Well, are they using this well in connection with other wells for storage purposes?

Mr. Weymann: Oh, yes, for storage purposes, but I don't see how we can segregate that well because the structure is contiguous.

The Court: The thought occurred to the court that if this were to be used for storage purposes and they would have [152] to shut down the well, it would not be the purpose of the oil and gas lease to do that, because the parties are dependent upon production. That is, the lessor, the owner of the property, wants to get something out of it. That is the reason he entered into the lease. That was the

thought that occurred to the court, but if it can be used for storage purposes of gas and at the same time the production may go ahead unrestricted, then there is another situation.

Mr. Weymann: Well, the production may not go ahead unrestricted because certain of the most productive wells have been shut down.

The Court: Well, there may be another element, but so far as the evidence goes, if anything there is an increase in production.

Mr. Weymann: That is correct. This particular well has not been shut down for technological reasons that I am not in a position to state to the court.

The Court: Very well. Your position is now that even if the Powelson case is followed that the party offering the proof must lay the foundation?

Mr. Weymann: That is correct.

The Court: It may be reasonably combined with other properties for the purpose suggested. That is your position?

Mr. Weymann: That is correct.

The Court: Unless Mr. Dechter can show the court something [153] to the contrary, I would say your position is correct on that.

Mr. Weymann: The Powelson case follows the Olson case, as I understand it.

The Court: Yes, I understand. I will ask Mr. Dechter now what he has to say. [154]

Mr. Dechter: My position is in accordance with the Powelson case.

The Court: I am talking about the burden of showing——

Mr. Dechter: The burden is upon——

The Court: The responsibility rests upon you to show it reasonably may be done.

Mr. Dechter: That is correct. I would like to make this comment, your Honor: Here some years ago, before they even knew about the system of repressuring fields as a whole, certain gas companies like the Signal Oil & Gas Company used to render a service where they would furnish you with so much gas which they would force into the hole, and then that would increase the production of the well, and the gas company would get back that gas in addition to the operator getting more oil. Now, I understand from geologists and engineers that under the normal method of production there is always at least one-third of the oil that is never captured because of the loss of this propulsive force, and when you re-pressure——

The Court: That is the object of repressuring.

Mr. Dechter: That is right.

The Court: Of course, there is quite a little to be said on that point. You take the Rio Vista fields, for example, where a storage of gas was effected, that is, that was the purpose, and there was no question but what a surplus of gas was attempted to be stored there; but there is always a [155] question of whether or not it is recovered. That is, it may be recovered in part but not entirely. So, those are matters which I don't think we have to go into, but I think on any basis if your testimony is offered you will first have to show the foundation that you have said you would show.

Mr. Dechter: That is right, the burden is on us, I admit that.

The Court: The court will not attempt to rule until tomorrow morning and give time for further consideration of it.

The Court is now adjourned until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:20 o'clock p.m., Wednesday, July 25, 1945, an adjournment was taken until Thursday, July 26, 1945, at 10:00 o'clock a.m.) [156]

Los Angeles, California

Thursday, July 26, 1945, 10:00 a.m.

Mr. Dechter: May it please the court, I have a short witness who would like to leave town about noon, and Mr. Weymann says he has no objection to my putting him on out of order.

The Court: It is satisfactory to the court. First, do you stipulate all the jurors are present and in their places in the jury box?

Mr. Dechter: Yes, sir.

The Court: Do you, Mr. Weymann?

Mr. Weymann: So stipulated, your Honor, yes.

The Court: You may call your witness.

J. D. RUSH,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: J. D. Rush.

The Clerk: R-u-s-h?

The Witness: Yes.

Direct Examination

By Mr. Dechter:

Q. Mr. Rush, what is your business?

A. I am in the oil well supply business.

Q. You are doing business under the name of J. D. Rush [158] Company? A. Yes, sir.

Q. And how long have you so been engaged in that business? A. 12 years.

Q. And what is the nature of that business?

A. It is buying and selling of oil well supplies.

Q. Prior to your going into business for yourself were you connected with the General Petroleum Corporation? A. Yes, sir.

Q. For how long? A. About 15 years.

Q. And while you were connected with General Petroleum Corporation were your duties that of buying and selling second-hand and used oil well equipment? A. Yes, sir.

Q. You have heretofore been shown an inventory of personal property located on what is known as Block Oil Company Well No. 10, being pages 1 to 4, inclusive, of Plaintiff's Exhibit C of Plaintiff's Amended Complaint? A. Yes, sir.

(Testimony of J. D. Rush.)

Q. And you have been asked to look that over for the purpose of expressing an opinion as to the fair market value thereof? A. Yes, I have.

Q. And do you have an opinion as to the fair market [159] value of that property as of October, 1943? A. Yes.

Q. And will you please state to the court and jury what that opinion is?

Mr. Weymann: Just a moment, please. I object to the testimony on the ground that it is incompetent, irrelevant and immaterial. On the further ground that a separate valuation may not be given for any of the elements comprising the property which is taken; that under the cases I would like to cite to your Honor, particularly the case of *Morton Butler Timber Company v. United States*, 91 Fed. (2d), that is in the Sixth Circuit, a separate valuation of the component parts of the property taken is not an element of the fair market value. And on the further ground that the date of valuation is the date on which this property was taken over by the United States, to-wit, September 28, 1942.

The Court: I didn't hear the last part.

(The record was read.)

The Court: Well, the objection is overruled, and, Mr. Weymann, with regard to the matter of separate valuation, as far as the date is concerned, that is the only basis in the opinion of the court for the separate valuation: that is, one should be considered as of the 28th of September, 1942, that is, the real property, and this remaining part, the personal

(Testimony of J. D. Rush.)

property and equipment, that that should be considered as of [160] either October, 1943, or of January 12, 1944. Mr. Dechter has asked the question as of October, 1943, and you have made no objection as to any differentiation between October, 1943, and January, 1944, so the court believes that the only reasonable way that this jury may be able to arrive at the total valuation is to take the separate valuation of those parcels, one as of September 28, 1942, and the other as of October, 1943. Of course, in the final valuation, that is, the fixing of it by the jury, there must be a total amount; but for the matter of compiling that or arriving at it, it would have to be taken separately, and this only because of the different dates.

I make that in explanation of the ruling of the court.

Mr. Weymann: Thank you, sir. May we have an exception?

The Court: Yes. Mr. Dechter, in order that the court may be clear, your position is the same as stated by the court?

Mr. Dechter: That is correct, your Honor.

Q. By Mr. Dechter: Do you want the question read, Mr. Rush, or do you have it in mind?

A. I have it in mind. [161]

Q. By Mr. Dechter: Will you please give us what your opinion is of the value of this personal property, machinery and fixtures as of October, 1943?

A. Approximately \$18,000.

(Testimony of J. D. Rush.)

Q. On or about October of 1943, based upon your knowledge and experience in the oil well equipment business, are you able to say whether the demand for used or secondhand oil well equipment was greater than the available supply?

The Court: Just a moment. Will you read the question, please?

(Question read.)

Mr. Weymann: That question is objected to as too indefinite. There is no statement as to what oil well equipment or where the equipment is located.

The Court: I think that objection is good, Mr. Weymann.

Q. By Mr. Dechter: Mr. Rush, where had you been carrying on your business of buying and selling oil well machinery and equipment and personal property?

A. Well, I buy and sell throughout California.

Q. And you maintain your principal office where?

A. 5199 District Boulevard in Vernon.

Q. That is in the central manufacturing district?

A. Yes.

Q. And in your business you deal with all the major oil well companies? [162]

A. Yes, sir.

Q. And you also deal with the independent oil companies?

A. Yes, sir.

Q. And you are familiar with what the demand is for oil well machinery and equipment?

A. Yes.

(Testimony of J. D. Rush.)

Q. And you are also familiar with what the supply is? A. Yes.

Q. Based upon that knowledge and experience, are you able to state whether in October of 1943 or thereabouts the demand in Southern California for oil well equipment and machinery was greater or less than the available supply?

A. The demand was greater than the supply.

Mr. Dechter: You may take the witness.

Cross Examination

By Mr. Weymann:

Q. Mr. Rush, did you personally inspect the equipment? A. I have, yes.

Q. When?

A. Well, I would say approximately two and one-half or three years ago.

Q. That would place it in 1942?

A. 1942 or the early part of 1943. [163]

Q. Was that before or after the property was taken over by the Defense Plant Corporation?

A. That was before.

Q. Before. Do you know whether or not the same equipment was in there in the well at the time on which you fix your valuation?

A. Well, using the inventory as a criterion, why, it was the same equipment.

Q. Did you inspect the pipe at the time of October, 1943?

A. Well, I had records of the pipe that was in the well. I couldn't inspect it, of course.

(Testimony of J. D. Rush.)

Q. But you didn't inspect it?

A. No. It is quite impossible.

Q. How much of the property mentioned in the inventory which you have valued at \$18,000 was recoverable?

A. Well, I wouldn't—

Mr. Dechter: May it please the court, we would object to that on the ground that it is immaterial and not proper cross examination. This condemnation is taking over an oil well which is the same as a going business. We are not considering here something that has been dismantled or that you can only get upon dismantling. They weren't interested in taking over so many feet of pipe out of the hole. They were interested in getting so many feet in a hole to use for the [164] purpose of operating as an oil well. It is just the same as if they took over a going business.

I think it is immaterial how much could be salvaged. It is just like somebody taking over an apartment house furnished and then asking what it would be worth when the apartment house was ready to fall down. It is what it is worth when they take it over.

Mr. Weymann: That brings us back to our contention. This witness testified there was a demand for secondhand material in the market, and predicated on that assumed demand in his opinion he has placed an estimate of \$18,000. Now, naturally in order to fill that demand, to obtain that price, the property and material must be severed, must be sold.

We are not dealing here now with the valuation

(Testimony of J. D. Rush.)

of this well. We are not dealing with the valuation of this property in connection with this well. We are dealing with it as a separate item, and it has nothing to do with the operation of the well so far as this witness is concerned.

Mr. Dechter: I respectfully disagree with Mr. Weymann. My opinion is that you have to take what the replacement value would be at the time the government took it over, what the government was authorized to take over, and there is what in my opinion is what the value is. It isn't what it would be if it were taken out as junk, but what the value is if you had to put it in place to use for the purpose of operating as an [165] oil well. That is my theory.

The Court: The objection is overruled.

Mr. Weymann: Would you read the question, please?

(Question read.)

The Witness: That would be quite indefinite as to the amount that could be recovered.

Q. By Mr. Weymann: Was your estimate then of the value of the entire amount?

A. The estimate is the value of the material in place.

Q. Of the material in place, and how much of that could be recovered and sold you have no idea?

A. Well, it is very indefinite. It would depend on the rulings of the Mining Bureau as to the quantity of pipe they would allow you to pull from the well.

(Testimony of J. D. Rush.)

Q. Well, the rulings of the Mining Bureau might prohibit the removal of any of it or all of it, isn't that so? A. No, not likely.

Q. Well, take the casing. There are approximately 6300 or 6400 feet of casing in the well. Do you know how much of that casing is cemented in?

A. Well, all you could do would be to estimate the amount, but ordinarily in a well of that depth, why, the cement would run up to a depth of 4000 or 3500 feet.

Q. And in your experience would you say that that cannot be recovered? [166]

A. Below the cement, it cannot be recovered.

Q. It cannot be recovered, and how much of that would be below the cement in this well?

A. Well, if the string was 6200 feet—is that the——

Mr. Detcher: The inventory shows 6275 feet of 7-inch casing.

The Witness: Well, estimating from my experience I would say that probably 3500 to 4000 feet of the pipe would not be cemented in.

Q. By Mr. Weymann: Well, is that just a guess, Mr. Rush?

A. Oh, yes. [167]

Redirect Examination

By Mr. Dechter:

Q. I ask if it isn't a fact that in so far as all of the personal property described on the inventory which you have been shown, that ordinarily when a

(Testimony of J. D. Rush.)

well has ceased to produce and is ready to be abandoned, you can remove all of that with the exception of the casing? A. That's right.

Q. And in so far as the casing is concerned, the Mining Bureau will require you to leave in the hole so much of the casing as is necessary to avoid what are known as surface waters from being contaminated so as to not damage the soil from an agricultural standpoint?

Mr. Weymann: Just a moment. I object to the form of the question. Mr. Dechter is not a mining engineer, I believe, and he cannot state the conditions under which it is to be taken out.

Mr. Dechter: You mean Mr. Rush?

Mr. Weymann: As to Mr. Dechter. I think Mr. Dechter has assumed facts not in evidence.

Mr. Dechter: I will qualify the witness a little further.

Mr. Weymann: I am not objecting to the qualification of the witness; I am objecting to the form of the question.

The Court: Read the question, please, Mr. Reporter.

(The question was read.) [168]

The Court: The objection is sustained. It calls for a conclusion of the witness as to what the Mining Bureau would do.

Mr. Dechter: May I proceed further with the witness, your Honor?

The Court: Yes.

Q. By Mr. Dechter: Mr. Rush, have you had

(Testimony of J. D. Rush.)

experience personally in abandoning oil wells and salvaging casing from oil wells? A. I have.

Q. And over what period of years have you had that experience?

A. During the past 13 years.

Q. About how many wells would you say that you have bought and abandoned for the purpose of salvaging equipment and casing from wells?

A. Perhaps 130 or 150.

Q. Wells? A. Yes.

Q. And while you were employed by the General Petroleum Corporation you did similar work?

A. Well, I didn't have any direct connection with it other than to handle the materials after they were salvaged.

Q. But since you have been in business for yourself you have bought wells for abandoning and you have had them [169] abandoned in accordance with the rules and regulations of the Mining Bureau?

A. Yes, sir.

Q. And you have taken casing from all those wells, have you not? A. Practically, yes.

Q. And ordinarily a well will have, first, what is known as a string of surface casing, is that right?

A. Yes, sir.

Q. And then it will have a second string of casing which is known as—what is the second string of casing known as?

A. That is the water string.

Q. Now, usually to about what depth does the surface casing go?

(Testimony of J. D. Rush.)

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A. That is the water string.

Q. Now, usually to about what depth does the surface casing go?

(Testimony of J. D. Rush.)

A. Well, there is a general rule which applies in all [172] cases. You find exceptions, of course.

Q. Mr. Rush, upon your knowledge of this equipment, if you were buying this equipment on this well and abandoning the well, how much would you pay for that equipment?

Mr. Dechter: To which we object upon the ground it is incompetent, irrelevant and immaterial. This isn't a case where the jury is to determine the market value of personal property after it is taken out of a well and to be considered separate from its use in connection with the well. The value is what it would cost to replace these items as of the date the government was authorized to take it over. That is the value; not what the junk value would be or what the value would be for salvage purposes.

The Court: I think the objection should be sustained; but, Mr. Dechter, you have asked the court to consider this equipment as property which is not attached to the realty.

Mr. Dechter: That's right, your Honor.

The Court: And, therefore, it is personal property.

Mr. Dechter: That's right. But my theory is exactly the same as an apartment house or a department store which has a leasehold for 10 years; the leasehold is being condemned, and there is also being taken over the fixtures and equipment, and the leasehold has one valuation and the fixtures and equipment another valuation. But the government is taking this over as a going concern, and in this

(Testimony of J. D. Rush.)

case of United States v. Powelson— [173] I took the trouble to read it last night—the government specifically points out where a going concern is taken over that the going concern valuation should be used.

The Court: And Mr. Weymann has argued that this should be taken over as a going concern and as a unit. Now, the court only varied from that general rule because as a matter of necessity there had to be two valuations, and that was because the court accepted your position that this property was not affixed to the realty.

Now, Mr. Rush, as I understand your testimony, all of this property which you have valued, this equipment which has been enumerated in the list that was supplied you, all of that could be removed from the well and the well site, and in the ordinary course of business would be done upon the abandonment of the well, except a certain part of the casing. Now, the part that could not be removed was the surface casing of eight or nine hundred feet; that is correct, is it?

The Witness: Yes.

The Court: And then about eight or nine hundred feet of the other portion of the casing could be removed, is that correct?

The Witness: Of the 7-inch, yes.

The Court: What?

The Witness: Of the 7-inch, yes.

The Court: And then the rest of it would have to be left [174] in the hole?

(Testimony of J. D. Rush.)

The Witness: Yes, sir.

The Court: And it ordinarily is done in that field?

The Witness: That's right.

The Court: Upon the abandonment of a well?

The Witness: Yes, sir.

The Court: I think the court will take a recess of a few minutes. The jury may retire to the jury room and they will bear in mind the admonitions of the court. Return when called by the bailiff.

(A recess was taken.) [175]

The Court: The jurors are all in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Proceed.

Q. By Mr. Dechter: Mr. Rush, in arriving at the value of \$18,000 for personal property described in the inventory on pages 1 to 4 of Exhibit C of the amended complaint, did you assume a value for all of the casing in the hole?

A. Yes, sir, with the exception of the 11 $\frac{3}{4}$ surface pipe.

Q. And you gave no value to that because that was not included in the inventory?

A. In the inventory.

Q. Now, the inventory shows 306 feet of 5 $\frac{3}{4}$ inch liner. Did you testify as to whether that could or could not be removed at the time the well was abandoned?

A. I testified it could not be removed.

(Testimony of J. D. Rush.)

Q. And what was the fair market value of that particular liner as of October, 1943?

A. \$1.08 per foot would be about \$326.00, I believe.

Q. And you testified how much of the 7-inch casing could not be removed? A. Yes, sir.

Q. Will you tell us again approximately how much of the [176] 7-inch casing you could not remove at the time of the well being abandoned because of the Division of Oil and Gas regulations?

A. About 5300 feet.

Q. And what was the fair market value of the 7-inch casing in October of 1943?

A. \$1.21 per foot.

Q. Now, do you have an opinion as to the fair market value of the 5¾ inch liner in September of 1942? A. Yes.

The Court: The liner is already testified to.

Mr. Dechter: I am now using September of 1942.

The Court: Oh, September of 1942.

Q. (By Mr. Dechter): What in your opinion was the fair market value of the 5¾ inch liner to place in that well in September of 1942?

A. Well, it had the same value.

Q. \$1.08 per foot? A. \$1.08.

Q. And what in your opinion was the fair market value of the 5300 feet of 7-inch casing to install in that well about September of 1942?

A. The same price, \$1.21.

Mr. Dechter: You may take the witness.

The Court: Well, I think, Mr. Dechter, you

(Testimony of J. D. Rush.)

could ask the [177] witness and should ask him what he considered the valuation of the equipment less the casing which could not be removed.

Mr. Dechter: Yes, your Honor. [178]

Q. (By Mr. Dechter): Mr. Rush, what, in your opinion, would be the fair market value of the personal property described on pages 1 to 4 of the inventory, Exhibit C of the amended complaint, eliminating therefrom the 5300 feet of 7-inch casing that you say could not be removed in the event the well was abandoned, and eliminating the 306 feet of 5¾-inch liner in October of 1943?

A. Could I have a piece of paper, please?

(A sheet of paper was handed to the witness.)

A. \$12,260.00.

The Court: Have you finished?

Mr. Dechter: Yes, your Honor.

The Court: Mr. Rush, was there any substantial difference in the value of the equipment which you have said was valued at \$12,260.00 in October of 1943, was there any difference between that value and what the value was of the same equipment September 28, 1942?

The Witness: No, there wasn't any substantial difference.

The Court: That is all.

Recross Examination

By Mr. Weymann:

Q. Mr. Rush, are you familiar with the terms of the master lease on this property?

(Testimony of J. D. Rush.)

A. No, I don't believe I am.

Q. Are you familiar with the terms of the sub-lease under [179] which Mr. Block holds this property? A. No.

Q. Are you familiar with the provisions for abandonment of the lease?

A. No, I don't believe so.

Q. Have you any opinion as to the abandonment cost?

A. Well, I could express an opinion.

Q. And still live up to the requirements of the lease?

Mr. Dechter: To which we will object upon the ground that the witness has testified he is not familiar with the terms of the lease, and therefore certainly couldn't give an opinion on that point.

Mr. Weymann: I will withdraw the question.

Mr. Dechter: Upon the further ground it is immaterial.

The Court: Well, he is withdrawing the question.

Q. By Mr. Weymann: The casing, the liner, and all of the items that you have eliminated now from your estimate of \$12,260.00, do those constitute all of the items that could not be recovered? Is there anything else besides the matters to which you have testified which would have to be left in the well?

A. No, there is nothing else that would have to be left in the well; that is, that is shown on the inventory.

(Testimony of J. D. Rush.)

Q. Are you familiar with the O.P.A. price regulations as of that date? [180] A. Yes.

Q. Is this estimate to which you have testified in accordance with the price ceiling? A. Yes.

Q. What is that price regulation, Mr. Rush?

A. I don't know whether I quite understand the question or not. You mean in a general way?

Q. There are two price ceilings, are there not?

A. No. There is only one that I know of.

Q. For equipment that is on the field, sold on the field, and equipment which is reconditioned?

A. Oh, yes, yes.

Q. Well, will you tell us what those are, please?

A. Well, the price of equipment which is sold on an as is basis, the ceiling price cannot exceed 55 per cent of the present selling price.

The Court: That is, of new——

The Witness: Of new material of like description.

There is another regulation to the effect that you can sell that equipment at 85 per cent of the new selling price of the same equipment, provided that that machinery or whatnot is moved to a machine shop and completely overhauled and repaired, the seller to give the same guarantee on the machinery that a new dealer would give. There is no regulation of that kind on pipe. [181]

Q. Now, may I ask you in arriving at your estimate of \$12,260, was that predicated on an as is valuation or on a reconditioned valuation?

A. Well, that was predicated on an as is valua-

(Testimony of J. D. Rush.)

tion with the exception incidentally of the casing. That was based on strictly O.P.A. ceiling price.

Q. And with the removal of that equipment, the well could not operate unless the equipment was replaced? A. That is true.

Q. I believe, Mr. Rush, that you testified before that your valuation of \$12,260 was replacement cost new? A. No.

Q. Then you testified it was the valuation——

Mr. Dechter: I will object to that on the ground that it is assuming something not in evidence. I have no recollection of such testimony.

The Court: I have no recollection, but I would not trust my memory. If it is important, you may refer to the record.

Mr. Weymann: That is all, Mr. Rush.

Mr. Dechter: You are excused.

The Witness: Thank you, sir. [182]

WALTER J. CROWN,

called as a witness by and in behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Dechter:

Q. Mr. Crown, in addition to expressing an opinion as to the value of the leasehold itself, were you asked to give an opinion as to the fair market

(Testimony of Walter J. Crown.)

value of the 10 7-12ths per cent gross overriding or sublessor's royalty owned by Mr. Block on Block's Well No. 10? A. Yes, sir.

The Court: Mr. Dechter, before you begin on that, I would like to call this to your attention, in line with the last part of the examination of Mr. Rush. Mr. Crown gave his estimate of the value of the leasehold as \$11,000. Now, I think it would be well to ask if he had in mind the presence of casing there which was a part of the real property, that is, being affixed so that it comes within the definition of a fixture.

Mr. Dechter: Very well. I will withdraw my former question.

Q. Mr. Crown, yesterday in giving your opinion as to the fair market value of the leasehold of Mr. Block subject to a [183] landowner's and sublessor's royalty aggregating 30 per cent, in arriving at that valuation, did you take into consideration the value of the casing in the well which was affixed in the well and which could not be removed under the regulations of the Division of Oil and Gas when the well is abandoned? A. I did not.

Q. Would your valuation be higher if you included the value of that casing in the well?

A. The unremovable casing?

Mr. Dechter: Miss Reporter, will you read the question?

(Question read.)

The Witness: Well, if there were any salvagable casing in the well, then the value would be higher.

(Testimony of Walter J. Crown.)

Q. By Mr. Dechter: Well, I am talking, Mr. Crown, as of September 1942?

A. It would be higher.

Q. In other words, in arriving at the valuation of that leasehold as you gave it to us yesterday, you only took into consideration the oil that would be recovered, the net oil that would be recovered. Is that correct?

A. Oil and gas.

Q. Yes. And, do you have any experience or knowledge to be able to express an opinion as to what the additional value of the leasehold would be by reason of having available in the well casing, 7-inch casing, 6275 feet and 5¾ liner [184] of 306 feet?

A. I have.

Q. What would be the additional increase in valuation by reason of that?

A. It would be approximately the value of the casing that Mr. Rush valued. I would have to go to some one like Mr. Rush to obtain a price on the salvagable casing.

Q. I see. Now, Mr. Crown, were you asked to give an opinion as to the fair market value of the 10 7-12ths per cent overriding royalty in Block Well No. 10?

A. Yes, sir.

Q. And did you arrive at such an opinion?

A. I did.

Q. What is your opinion as of September of 1942?

A. \$3120.00.

Q. What was that again?

A. \$3120.00.

Q. In connection with your work with the Division of Oil and Gas, did you become familiar with

(Testimony of Walter J. Crown.)

the different oil fields in structure in Southern California? A. I did.

Q. And are you able to state whether there are any other fields within Southern California besides the Playa del Rey oil field that would be available for use as an underground gas reservoir? [185]

Mr. Weymann: That is objected to as being incompetent, irrelevant, immaterial, and having no bearing on the valuation of the property taken in this proceeding.

The Court: I understand it to be just a preliminary question. The question is overruled.

Mr. Dechter: Do you want the question read?

The Witness: Please.

Mr. Dechter: Will you read the question, please?

(Question read.)

The Witness: I don't know of any with the favorable conditions as the Playa del Rey field.

Q. By Mr. Dechter: Are you able to state——

Mr. Weymann: I move to strike the answer as not responsive.

The Court: It may go out.

Mr. Dechter: Will you read the question again, please, Miss Reporter? Try to answer it, Mr. Crown, if you can.

The Court: Answer it yes or no, and then you may explain your answer if it needs some explanation.

(The question was reread.)

The Witness: Yes.

(Testimony of Walter J. Crown.)

Q. By Mr. Dechter: Will you please state to the court and jury if there are any other fields available for use as a gas reservoir in Southern California besides the Playa del Rey field?

A. There is another one.

Q. And what other field or fields are there available for such purpose besides the Playa del Rey field?

A. I would say the El Segundo oil field.

Q. Any other that you know of?

A. Those have the characteristics and conditions which would fit a gas storage project.

Mr. Weymann: I move to strike the answer as not responsive.

The Court: Well, I don't know whether he had finished it or not. Had you finished your answer, Mr. Crown? [187]

The Witness: No. I had a little more to go.

The Court: Just go ahead.

The Witness: The Playa del Rey and El Segundo fields are very similar geologically, and the conditions in those two fields are ideal, you might say, for a gas storage project; whereas other fields in the basin would not be so well suited.

Q. By Mr. Dechter: Are you able to state to the court and jury what those peculiar conditions are that exist in those two fields that make them suitable as a gas reservoir?

A. Well, the oil zone there is a single zone and more or less uniform in character; whereas in other fields we have alternating sands and shales lying

(Testimony of Walter J. Crown.)

in lenses, and so forth, and the gas cannot migrate as readily in those fields as it can in a single zone field like Playa del Rey or El Segundo.

The Court: When you use the word "zone", in the ordinary sense you mean a stratum, is that correct?

The Witness: Well, it may be a single stratum or it may be strata.

The Court: It may be several strata, is that correct?

The Witness: Yes.

The Court: I wasn't sure it was understood by the jury when you used the word "zone". As I understand it, oil men use the word "zone" in connection with that business as meaning either a stratum of oil or several strata of oil from which production is had, is that correct?

The Witness: That is correct. In most California fields there is more than one stratum in an oil zone.

The Court: In a zone?

The Witness: That is correct.

The Court: But a zone is separate and distinct from another zone which might consist of several strata, is that correct?

The Court: That is usually optional as to how the zones are split up or segregated.

The Court: Go ahead, Mr. Dechter.

Q. By Mr. Dechter: Are there any other fields in California that have been used for the storage of gas, underground storage of gas?

(Testimony of Walter J. Crown.)

Mr. Weymann: That is objected to as entirely incompetent and irrelevant and outside of the issues in this case. Other gas storage fields are not on trial here.

The Court: I think the objection should be sustained, and it is.

Mr. Dechter: May I note an exception, and may I approach the bench and make an offer, your Honor, on that point.

The Court: Yes, you may.

(The following proceedings were had out of the hearing of the jury:)

Mr. Dechter: I offer to show by this witness that there [189] are other fields in California, such as Golita in Santa Barbara County, and the Rio Vista field in Northern California, which have been used as gas reservoirs for underground storage?

The Court: What is the purpose of that?

Mr. Dechter: The purpose is to show, under the United States v. Powelson case, that it isn't a conjectural use that this field might have been put to.

The Court: I didn't consider that phase of it.

What have you to say about that, Mr. Weymann?

Mr. Weymann: Unless there is, first, a foundation laid that this field can be unified, and unless this particular property can be used, why, I think it is objectionable, because we are not trying the gas storage fields, we are only trying this property.

The Court: I know, but this is just a part of the foundational proof, and in considering it in that light, I think the court will change its ruling and

(Testimony of Walter J. Crown.)

permit it to be shown as to the others, simply as part of the foundation.

Mr. Dechter: I might state, your Honor, in this Powelson case the evidence was received.

The Court: I think it should go in for the purpose stated.

(The proceedings were resumed within the hearing of the jury as follows:)

The Court: The Court will withdraw its ruling. I think [190] it will be better to let you ask your question again, Mr. Dechter.

Q. By Mr. Dechter: Mr. Crown, do you know of any other oil and gas fields in California that have been used for the underground storage of gas? A. I do.

Mr. Weymann: I renew my objection for the purpose of the record.

The Court: Yes. The objection is overruled.

Mr. Weymann: And exception.

Q. By Mr. Dechter: Will you please state to the court and jury what those other fields are that have been used for underground gas storage?

A. The Golita gas field, and I believe the Rio Vista gas field.

Q. Where is the Golita field situated?

A. In Santa Barbara County.

Q. And by whom is that field operated as an underground gas storage reservoir?

A. I believe it is Pacific Lighting Corporation.

Q. Pacific Lighting Corporation is one of the

(Testimony of Walter J. Crown.)

public utility companies that furnishes gas in California? A. I believe so.

Q. What other fields do you know of that have been used for underground gas storage? [191]

The Court: He stated Rio Vista.

Q. By Mr. Dechter: Yes. By whom is the Rio Vista field operated?

A. There are a number of operators up there. I do not know which company or utility company does the storing up there.

Q. How long did you say you have been in California? A. 20 years.

Q. Are you familiar with whether a general condition has prevailed in Southern California during the winter months as to whether there is an adequate supply of gas for domestic and industrial use?

A. As for any particular time, is that?

Q. During the winter months.

A. I would have to qualify the answer.

The Court: Have you answered it yet?

The Witness: No, I haven't.

The Court: Read the question, Mr. Reporter.

(The question referred to was read as follows: "Are you familiar with whether a general condition has prevailed in Southern California during the winter months as to whether there is an adequate supply of gas for domestic and industrial use?")

The Court: If you can answer it yes or no, so answer it, and then explain your answer if it is necessary. [192]

(Testimony of Walter J. Crown.)

The Witness: Yes is the answer.

The Court: Any explanation?

The Witness: The reason for that answer is that gas has been brought down from Northern or Central California in the coast regions to supply the needs in the Los Angeles basin or metropolitan area.

Mr. Weymann: I move to strike that answer as not responsive.

The Court: That part may go out.

Q. By Mr. Dechter: Do you know Mr. Crown, whether for the last 10 years it has been necessary for the gas companies to restrict their available supply of gas to domestic users and to curtail industrial users by reason of the shortage of gas available during the cold weather?

Mr. Weymann: To which I object on the ground that this witness has not qualified as an expert in the gas utility business. That is strictly a matter of the production and distribution of gas. The witness has shown no qualification whatever to answer that.

The Court: I think you better qualify him further as to that point.

Q. By Mr. Dechter: Mr. Crown, in connection with your work with the Division of Oil and Gas did you become familiar with the needs of Southern California for natural gas? A. I did not.

Mr. Dechter: What was the answer?

(The answer was read.)

Q. By Mr. Dechter: In giving your valuation yesterday of the leasehold, I believe you testified

(Testimony of Walter J. Crown.)

you gave no consideration to any increase in value by reason of the property being suitable for a gas reservoir, is that correct? A. That is correct.

Q. And are you able to give us an estimate as to how much more valuable the leasehold would be by reason of its being available for use as a gas reservoir?

Mr. Weymann: If the court please, I would like to examine this witness on voir dire.

Mr. Dechter: He hasn't testified yet whether he is able or not. It may not be necessary. Do you want the question read?

The Witness: If you please.

Mr. Dechter: Will you read the question?

(Question read.)

The Witness: I cannot.

Q. By Mr. Dechter: And is that due to the fact that this is the first time——

Mr. Weymann: That is objected to.

The Court: Don't answer the question. Finish your question, Mr. Dechter.

Q. By Mr. Dechter: Is that due to the fact that this is the first time that such a project has been attempted in Southern California?

Mr. Weymann: That is objected to as being incompetent, irrelevant, and immaterial.

The Court: The objection is sustained.

Mr. Dechter: That is all. [195]

(Testimony of Walter J. Crown.)

Cross Examination

By Mr. Weymann:

Q. Mr. Crown, you stated you were employed by the Division of Oil and Gas as a petroleum engineer for 16 years? A. Yes, sir.

Q. Will you kindly describe to the jury your duties in that connection?

A. It was supervision of the drilling operation and abandonment of oil wells, oil and gas wells.

Q. Did you at any time during the course of your employment have occasion to make an appraisal or valuation of any of the property that you supervised? A. None that I supervised.

Q. None that you supervised. The regulations of the Division of Oil and Gas prohibit any of their employees from engaging in private business, do they not?

Mr. Dechter: That is objected to on the ground that it calls for a conclusion from the witness and is not the best evidence.

Mr. Weymann: Well, the witness was an employee and he should know.

The Court: I think he should know. Under the circumstances he has been qualified as a person who was in the employ for 16 years. It was your duty to advise yourself as to those regulations?

The Witness: That is correct, sir.

The Court: Did you do it, did you advise yourself as to the regulations?

The Witness: I did.

The Court: The objection is overruled.

(Testimony of Walter J. Crown.)

Mr. Weymann: Will you read the question, please?

(Question read.)

The Witness: Yes, but I think the question needs a little clarification. There are certain things to go into private business in the fields where—well, I might state—

The Court: Oh, I think that is all too remote to have any real value. The court will order it all stricken out, that is, regarding the regulations. The jury is ordered to disregard it. Proceed, Mr. Weymann.

Q. By Mr. Weymann: Since leaving the Division of Oil and Gas, Mr. Crown, would you kindly tell the jury what your experience has been?

A. I have been consulting petroleum engineer for Atlantic Oil Company, for Morton & Dolley, Krieger Oil Company, Menco Oil Company, and Continental Development Company. I believe that gets most of them.

Q. That is five firms and corporations. What is the longest period of time that you have been consulting engineer for any of those?

A. For one year. [197]

Q. For which one?

A. Atlantic Oil Company.

Q. How long have you been consulting engineer for Morton & Dolley?

A. One year.

Q. For Krieger Oil Company?

A. About 10 months.

Q. For Menco Oil Company?

(Testimony of Walter J. Crown.)

A. About 10 months.

Q. And for Continental Development Company?

A. That is new in the past month.

Q. Within the past month? A. Yes.

Q. In your capacity as consulting engineer, did you advise—by the way, that Morton & Dolley, what business is that? A. Oil operators.

Q. In the course of your employment by any of these concerns, did you ever have occasion to advise them either on the purchase or on the sale of operating oil properties? A. I have.

Q. Which one and when?

A. I can't think of any one offhand where they have definitely made a purchase. There have been no sales, but in the case where the purchases were not made, it was on my [198] recommendation as to productivity that the property was not purchased.

Q. When were you employed to make a valuation of the Block's property in this proceeding?

A. About June 1, 1945.

Q. That is June 1st of this year?

A. That is correct, yes.

Q. What did you do in connection with that valuation?

A. I constructed a production decline curve with Colly No. 10 well and arrived at an ultimate recovery for the well.

Q. Have you that production decline curve with you? A. I have.

Q. May I see it?

A. Yes (handing document).

(Testimony of Walter J. Crown.)

Q. Mr. Crown, your estimate of value then is based on this production decline curve, is it not?

A. That is correct.

Q. How many barrels of ultimate future recovery did you estimate?

Mr. Dechter: Do you want that curve introduced in evidence? I have no objection.

Mr. Weymann: Well, I will get the information by figures.

The Witness: 40,300 barrels.

Q. By Mr. Weymann: 40,300 barrels? [199]

A. That is correct.

Q. Is that for the 100 per cent interest, that is, for the entire production?

A. The entire production.

Q. And did you estimate the value of the lessee's production separately, the 70 per cent?

A. No, I didn't figure the barrels there. I did in dollars.

Q. You figured it in dollars? A. Yes.

Q. What price did you estimate?

A. 97 cents per barrel.

Q. What gravity oil did you assume as the production? A. An average of 19.3.

Q. And what was the field price at that time?

A. At which time?

Q. What was the field price of oil of that gravity at that time in September of 1942?

A. I can't give you the exact price at that date because my price schedule jumps from May 23,

(Testimony of Walter J. Crown.)

1941 to April 1, 1943. Under May 23, 1941, the Union posted price was 77 cents.

Q. Do you know what it was on September 28, 1942?

A. I would say it would be approximately that same price.

Q. 77 cents. The 40,000 barrels which you have [200] testified as being the ultimate recovery, what period of time would that be recovered?

A. Approximately ten years.

Q. And in arriving at your valuation, did you take into consideration any pipeline charge?

A. No, sir.

Q. Do you know whether there was a pipeline charge?

The Court: A carrying charge?

Mr. Weymann: A carrying charge.

The Witness: I do not know.

Q. By Mr. Weymann: You don't know. If there was a charge, would it make any difference in your estimate?

Mr. Dechter: To which I will object as being immaterial, and assuming a fact not in evidence.

Mr. Weymann: The witness is being asked to state his opinion.

The Court: I think the objection should be overruled.

The Witness: The amount of oil would still be the same.

Q. By Mr. Weymann: Would the price of it be the same?

(Testimony of Walter J. Crown.)

The Court: What?

Q. By Mr. Weymann: Would the price paid to the purchaser be the same?

A. I don't know just how they would handle that. If they had to pay a trucking charge there, why it might be taken off the price of the crude. It will lower the price of [201] the crude.

Q. Do you know if they had to pay a trucking charge? A. I don't know.

Q. Do you know if they had to pay a pipeline charge? A. I don't know.

Q. You don't know. So, you took none of those items into consideration? A. I did not.

Q. And now you estimate the value on the basis of 97 cents per barrel? A. That is correct.

Q. Yet the posted market price you have testified, the Union Oil Company price, was 77 cents. Will you please tell your reason for using the higher price?

A. In the spring of 1943 the posted price was——

Q. Pardon me just a moment.

Mr. Dechter: May I suggest that counsel let the witness finish his answer, your Honor? I don't think it is fair to interrupt.

Mr. Weymann: May I reframe my question? I don't believe the witness can testify to anything that took place after the acquisition.

The Court: You asked him the question and I think that he ought to be allowed to answer it, Mr. Weymann. If you reframed it before he began his answer, that would be your [202] privilege. but

(Testimony of Walter J. Crown.)

I think he ought to be allowed to answer the way he started.

The Witness: In the spring of 1943 the posted price was 94 cents per barrel, and that was a matter of a few months subsequent to the commencement of the estimate. My estimate was based on the early probable productions. So, I used 97 cents which is 94 cents, the posted price per barrel of oil, plus three cents which is the value of gas and gasoline which the operator received per barrel of oil produced. There is a certain amount of gasoline produced with the oil.

The Court: It is a part of production and it is in addition to the price received for the oil itself?

The Witness: That is correct, and I applied it to the price of oil rather than making a separate valuation for the gas and gasoline.

The Court: Well, that is clear.

Q. By Mr. Weymann: So that the price you placed on that was the price of the total product. Is that correct?

A. The oil, gas, and gasoline.

Q. Now, Mr. Crown, you predicated then the price of 97 cents entirely on the increase which took place in 1943? A. That is correct.

Q. And you assumed that the price would continue to 1952? A. The assumption is that.

Q. That was your assumption? A. Yes.

Q. It was a pure assumption, was it not?

A. My own opinion is that it might be higher than that.

(Testimony of Walter J. Crown.)

Q. Now, tell us, please, how on a total recovery of 40,000 barrels over a period of ten years you arrived at a valuation of \$11,000 for this leasehold estate? Just outline the various steps which you took to the jury.

A. The estimated recovery is 40,300 barrels. The income for that amount of oil at 97 cents per barrel is equivalent to \$39,091. Mr. Block's leasehold interest of 70 per cent is equivalent to \$27,000 or \$27,364. Operating costs for the period of the life of the well are \$13,870, leaving an operating profit of \$13,494. Using a 6 per cent discount factor over that period of time will arrive at a present worth of \$10,932.- [204]

Q. Mr. Crown, what is your definition of fair market value?

Mr. Dechter: To which we object on the ground that is immaterial what his definition is.

Mr. Weymann: The witness is testifying to fair market value.

The Court: I think it is proper to ask him what his understanding is, what he meant by the use of the term "fair market value" when he gave his answer. The objection is overruled.

The Witness: Approximately \$11,000.00.

The Court: No. What do you understand by the use of that term "fair market value"?

The Witness: Well, it would be a price at which a purchaser would make a reasonable investment.

Mr. Weymann: I submit, if the court pleases, that the witness' understanding of fair market

(Testimony of Walter J. Crown.)

value disqualifies him entirely and his testimony is not admissible, on the basis of his own statement of his understanding.

A. Juror: We are unable to hear this in the jury box, your Honor.

The Court: Yes, Mr. Weymann, you let your voice drop and it is a little difficult to hear you.

Read the statement of Mr. Weymann.

(The record was read.) [205]

The Court: Have you any further questions?

Mr. Weymann: I move, now, that his entire testimony be stricken as to the value of the lease.

The Court: Well, Mr. Weymann, it isn't the definition that the court would give or you would give or Mr. Dechter, but when you analyze it, is it so very far away? We would say where a willing purchaser would buy from a willing seller and having a reasonable time in which to investigate.

Read his answer, please, Mr. Reporter.

(The answer was read as follows: "Well, it would be a price at which a purchaser would make a reasonable investment.")

The Court: I think the motion should be denied.

Mr. Weymann: I will pursue the question a little further.

Q. By Mr. Weymann: Is it your opinion, Mr. Crown, that to receive over a period of 10 years \$13,494.00 a prospective purchaser having full knowledge of all of the conditions would be willing to pay in cash \$10,930.00?

A. Yes, sir.

(Testimony of Walter J. Crown.)

Q. Do you know of any oil property that has been bought or sold on that basis?

A. I think I could mention some.

Q. Mention them, please.

A. I think Jergens Oil Company bought production at Wilmington in the Wilmington oil field—— [206]

Q. Of your own knowledge, Mr. Crown?

Mr. Dechter: Has the witness finished his answer, Mr. Weymann?

The Court: Yes, just finish your answer, and then if there is any defect in the answer you may call it to the attention of the court by a proper motion.

Read the question and the answer as far as it has been given, please.

(The record was read.)

A. ——on the basis of a thousand dollars per barrel of production.

Mr. Weymann: I move to strike that answer as not responsive.

The Court: Because he used the words “I think”?

Mr. Weymann: Because he used the word “I think” and on the basis of a thousand dollars per barrel.

The Court: Read the answer.

(The answer was read.)

The Court: Did you mean to say that?

The Witness: That is correct, yes.

The Court: A thousand dollars per barrel?

(Testimony of Walter J. Crown.)

The Witness: Per barrel. If aw ell makes 25——

The Court: Pardon me. The answer may go out. Now, you may proceed further, Mr. Weymann.

Q. By Mr. Weymann: You used a 6 per cent discount [207] factor, is that correct?

A. That is correct.

Q. Will you kindly explain to the jury just what a 6 per cent discount factor is?

A. The 6 per cent discount factor is the value or the worth of one dollar based on a 6 per cent discount—the value of that one dollar a year from today, and from there on in the future its adding a 6 per cent or deducting 6 per cent on the investment. In other words, the value of a dollar today, or, I should say, the value of a dollar approximately 10 years from now is only worth fifty-nine and two-tenths cents.

Q. Do you know of an instance, Mr. Crown, in which any one has paid approximately \$11,000.00 for an oil property out of which in the course of 10 years he could recover approximately \$14,000.00? I am using round figures now. Buy a producing oil well.

A. I can't give you any specific example.

Q. Is it your opinion that such people exist?

A. There are.

Q. Now, will you tell us, please, how you arrived at the valuation of the 10-7/12 per cent override?

A. I used the same production in barrels of oil and used a price of 93 cents per barrel. In this

(Testimony of Walter J. Crown.)

case the 93 cents—I started with 97, and the only costs against the [208] overriding interest that I used was approximately 4 cents per barrel mining rights tax which I deducted from the 97 and arrived at a 93 cents per barrel figure, and using a 6 per cent discount factor arrived at a value of \$3,120.00.

Q. Do you know what the amount of the total value in dollars and cents is? Have you that there?

A. Of the production?

Q. Of the 10-7/12 per cent over the period of 10 years.

A. \$37,479.00.

Q. No, I am sorry. The total override of the 10-7/12 per cent.

A. This is for the total, yes. 10-7/12 per cent.

Q. Is how much?

A. Let me ask first if I have the question correctly.

Mr. Weymann: Read the question, please.

(The record was read.)

The Witness: That figure is \$3,971.00.

Q. By Mr. Weymann: So, Mr. Crown, you wish us to understand that in your opinion an informed purchaser would be willing to pay a willing seller \$3,120.00 cash now in order to receive \$3,971.00 over a period of 10 years from oil royalties from the Playa del Rey field?

A. That question I would answer no. This is a royalty set-up.

Q. Pardon me? [209]

The Court: I think the court will recess at this

time until 2:00 o'clock. The members of the jury will return at that time. Bear in mind the admonitions of the court.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [210]

Los Angeles, California,
Thursday, July 26, 1945, 2:00 p.m.

The Court: Mr. Crown, will you take the stand, please?

Mr. McLay and Mr. Dechter, are you ready to proceed?

Mr. McLay: Mr. Weymann isn't here. He just stepped out. May I get him, please?

The Court: Yes. Is it stipulated that all jurors are present and in their places?

Mr. Dechter: So stipulated.

Mr. McLay: So stipulated on the part of the government.

WALTER J. CROWN,

called as a witness by and in behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination* (Continued)

Mr. Weymann: I apologize to the court. I stepped out for a drink of water.

The Court: That is all right.

Q. By Mr. Weymann: Mr. Crown, what was

(Testimony of Walter J. Crown.)

this well producing in the month of September, 1942? A. 436 barrels of oil.

Q. And how much gross fluid?

A. I do not have that figure. [211]

The Court: What was that question?

(Question read.)

Q. By Mr. Weymann: Have you the record of water production? A. I do not.

Q. Did you take into account in the making of your estimate of value the cost of lifting water along with the oil?

A. The cost of lifting the water is included in the lifting cost.

Q. In other words, the lifting cost comprises the cost of lifting the entire fluid. Is that correct?

A. That is correct.

Q. So that if the water content increases and the oil content decreases, the price you received would be correspondingly decreased. Is that so?

A. The price per barrel of oil would not decrease.

Q. The total fluid of what you have lifted?

A. Of the gross fluid.

Q. Of your gross fluid would decrease?

A. That is correct.

Q. It would?

A. If there is an increase in gross fluid.

The Court: Pardon me just a moment. Mr. Crown, how many barrels did you say in that month? [212]

The Witness: 436.

(Testimony of Walter J. Crown.)

The Court: As I understand it, that is 436 barrels of oil?

The Witness: Clean oil, yes.

Q. By Mr. Weymann: Have you any records of the water production from that well during any time it went on production? A. I have not.

Q. You took no record at all of it, is that right?

A. I didn't consider the water content.

Q. You didn't consider the water content. Have you any record of the gas production during that period?

A. Not as such. I have only the value of the gas and gasoline equivalent per barrel of oil which was furnished to me by Mr. Block.

Q. And you based your estimate on the information you received from Mr. Block?

A. From Mr. Block, yes. [213]

Q. Of your own knowledge you have no record?

A. I have not.

Q. In fixing your valuation did you take into account the cost of abandonment?

A. Of which?

Q. The cost of abandonment.

A. No, I did not.

Q. Do you know the provisions of the master lease or of the sublease? A. I do not.

Q. Do you know whether or not there is an expense connected with the abandonment of a well?

A. Repeat that, please.

The Court: Read the question.

(The question was read.)

(Testimony of Walter J. Crown.)

A. There is always an expense connected with abandoning a well.

Q. By Mr. Weymann: And that is the obligation of the lessee, is it?

A. Normally.

Q. Do you know whether or not it is in this instance? A. I don't know.

Q. You made no effort to ascertain it?

A. I did not.

Q. You figured the value at which you have arrived on [214] the basis of 94 cents per barrel predicated upon an increase in the value of oil?

A. The increase was there at the time I made my valuation.

Q. The increase was there at the time you made your calculation? A. That is correct.

Q. When did you make your calculation?

A. I beg your pardon?

Q. When did you make your calculation?

A. In June of this year.

Q. When did that increase go into effect?

A. In the spring of 1943.

Q. So that from September 28 to the spring of 1943 the price was not 94 cents a barrel?

A. That is correct.

Q. It was actually 75 cents per barrel?

Mr. Dechter: I think this has all been gone into.

The Court: I think that has been covered.

Mr. Weymann: What I am getting at is the difference between the two periods.

Mr. Dechter: You asked him that this morning.

(Testimony of Walter J. Crown.)

The Court: I thought you had covered it.

Mr. Weymann: I don't think I have, your Honor.

The Court: If you haven't you may proceed.

Q. By Mr. Weymann: So that the actual amount received from September 28, 1942, to the spring of 1943 was 75 cents or thereabouts, is that correct?

A. That is correct, yes.

Q. And yet in arriving at your estimate you figured 94 cents per barrel for the entire period?

A. That is correct.

The Court: Plus the three cents for the other element that was recovered; that is correct, isn't it?

The Witness: Yes.

The Court: In other words, 97 cents instead of 94 cents.

Mr. Weymann: I am speaking now only of oil.

The Court: Yes, but he added that to the oil to give a valuation, instead of giving it separately he gave it altogether as 97 cents per barrel.

Mr. Weymann: 97 cents per barrel, but 94 cents for the oil.

The Witness: That is correct.

The Court: But his valuation was based on 97 cents.

Mr. Weymann: If the court please, what I am trying to get at is the difference in the oil.

Q. By Mr. Weymann: There was no difference in the price of the gas at any time, was there?

A. None that I know of.

(Testimony of Walter J. Crown.)

Mr. Weymann: No further questions, Mr. Crown. [216]

Mr. Dechter: Your Honor, as I advised the court yesterday, I had subpoenaed the records of the Union Oil Company to show what the production of this well was after the government took it over, and Mr. Weymann is willing to stipulate that the letter attached to the summary of the production may be used in lieu of Mr. Edwards, the secretary of the Union Oil Company of California, appearing in person to identify that as a summary of their books and records, subject to his objection to its admissibility. Is that correct?

Mr. Weymann: That is correct.

Mr. Dechter: At this time, having so identified this statement of oil, gas and natural gasoline produced from Defense Plant Corporation Well No. 10 at Playa del Rey, formerly Block Oil Company Well No. 10, I will ask leave to offer this as a Defendant's exhibit.

The Court: It may be received.

Mr. Weymann: I thought the court was going to examine it. I have an objection to it.

The Court: Very well. Strike out the statement of the court.

Mr. Weymann: I object to the receipt of that in evidence on the ground it is entirely incompetent, immaterial and irrelevant; has no bearing on the value of this property as of September 28, 1942. It shows the production of that well during a period after the government took it over. The [217] basis

(Testimony of Walter J. Crown.)

of the valuation for this property, as I understand the law, must be on the condition as it existed at the time the property was taken.

Mr. Dechter: The same argument was made yesterday when Mr. Block was on the stand, may it please the court, and I pointed out——

The Court: When who was on the stand?

Mr. Dechter: Mr. Block. The same objection was made and the testimony received, but your Honor later on struck it out merely because his information came from the oil company that was buying the oil and not his own personal information. I argued yesterday to your Honor that both our witnesses and the government's witnesses are going to base their valuation on the estimated future production of this well, and this is some evidence as to what the well was capable of doing. Mr. Weymann made the counter argument that there might be some reasons for the increased production. Your Honor said that was a matter he could bring out on cross examination or by independent evidence; that it went to the weight and not to the admissibility.

Mr. Weymann: There is a further reason, if the court please. The whole question to be determined here is what an informed buyer would pay to a willing seller of that property at the time it was taken. Now, manifestly an informed buyer can only base what he would be willing to pay on whatever [218] evidence was available as of that date. He would not have the advantage of the actual production subsequent to that time. That would have

(Testimony of Walter J. Crown.)

no influence whatever on the price he would pay or what the owner would be willing to receive. In other words, it would require a prophetic vision on the part of both buyer and seller to take into account something which happened in the future. As a matter of fact, he may take into account trends or what he thinks might happen in the future, anything of that kind which would influence the market. But certainly the actuality of what actually occurred under the circumstances would have no bearing whatever as to the market value influencing either party. [219]

Mr. Dechter: In my opinion, your Honor, it is exactly similar as if the Government was condemning a crop of potatoes on the farm, the crop having not been just merely planted but hadn't even come up. Some of these crop buyers who are constantly buying crops in advance would come in and give figures of so much. By the time the trial came up, the crop had been harvested. Now, that wouldn't be evidence of what the value is. It would go to show the reasonableness of the opinion given on that particular date, and that is the purpose for which it is offered, to show the reasonableness of the various opinions that will be given by the experts.

The Court: I think that the court should give further time to consideration of this. It seems that it is not required of the court that it should shut its eyes to the figures that we actually have here where they are available. In other words, Mr. Crown or any other expert has to give an estimate of what

(Testimony of Walter J. Crown.)

the valuation was on the date of September 28, 1942. Now, he must base that upon his knowledge of all the circumstances that he has, and as it has been stated in a very recent case, one referred to by Mr. McLay yesterday, sometimes these estimates are little better than a guess.

Now, we have had the advantage of three years almost since that time. Must the court shut its eyes and the jury close their ears to the testimony which we actually have of [220] the value that was produced from the well? Now, I don't know. Sometimes we have rules and they seem reasonable as of a certain time, but is this such a hard and fast rule that Mr. Crown or the others can't avail themselves of that information which they actually have? Certainly for a period of three years nothing could be better than the actual results.

Now, while there might be a situation as to why it was a greater production, I can understand it might be by reason of repressure in there as the result of the storage, and certainly that must be given consideration; also, that there is only so much oil available there and that if it is gotten out in five years instead of ten, there would be no more oil. However, so far as the price itself is concerned, that is a posted price which was paid for oil of like character throughout the field.

It does present quite a question and the court may have to call on you gentlemen for help from some of the precedents that have been established in similar cases.

(Testimony of Walter J. Crown.)

Mr. Weymann: May I make one further observation?

The Court: I was going to say that the court will sustain the objection at the present time. Let it be marked as Defendant's Exhibit A for identification and then the matter may be presented to the court again before the close of the trial. [221]

Mr. Dechter: Very well, your Honor.

(The document referred to was marked as Defendant's Exhibit A for identification.)

The Court: Anything further, Mr. Dechter?

Redirect Examination

By Mr. Dechter:

Q. Mr. Crown, when you gave your opinion as to the fair market value, did you have any information available to you as to what the production was after September, 1942?

Mr. Weymann: That is objected to as being incompetent, irrelevant and immaterial as to what it was after the time it was sold.

The Court: It does not appear to the court that this is a matter for redirect examination in any event. The objection is sustained.

Mr. Dechter: May I make an offer, your Honor, on that?

The Court: Yes.

Mr. Dechter: Does your Honor want us to approach the bench?

The Court: Yes.

(Testimony of Walter J. Crown.)

(Thereupon, counsel approached the bench, and the following proceedings were had out of the hearing of the jury:)

Mr. Dechter: I offer to show by this witness that he [222] did not have this data on the production subsequent to September of 1942 available to him, and that if he had, his opinion would have been different as to the value of the property.

The Court: Well, I am convinced it is not a matter for redirect examination.

Mr. Dechter: Very well. May I note an exception?

The Court: Yes.

Mr. Dechter: Thank you.

The Court: Also, I think it is incompetent, irrelevant and immaterial. It goes to a negative matter.

Mr. Dechter: Very well, your Honor.

(Thereupon, proceedings were resumed within the hearing of the jury.)

Q. By Mr. Dechter: Mr. Crown, when you gave your valuation as to the leasehold interest on direct examination, you excluded any value on personal property, did you not?

A. That is correct.

Q. Your value was confined to the value of the oil leasehold from an oil standpoint only?

A. Oil and gas.

Mr. Weymann: Will you speak up a little louder, Mr. Crown?

(Testimony of Walter J. Crown.)

The Witness: Oil and gas.

Q. By Mr. Dechter: On or about September of 1942, and [223] since that time has the number of buyers per oil leases and royalties been greater or less than the supply of oil leases and royalties offered for sale?

Mr. Weymann: That is objected to as being incompetent, irrelevant, immaterial, and not proper redirect examination.

The Court: It does not appear to the court that there is proper foundation. I don't believe Mr. Crown has attempted to qualify himself as one who knows of the state of the market for oil leases or royalties. In any event, I think the objection should be sustained.

Q. By Mr. Dechter: Are you familiar, Mr. Crown, with what the general consensus of opinion among oil men as to whether the price of crude will go higher or lower as soon as Governmental regulations are lifted?

Mr. Weymann: That question is objected to as purely hypothetical and calling for a conclusion as to the opinions of other men.

Mr. Dechter: It is a preliminary question, your Honor, whether he is familiar, and then I will ask him what his familiarity is based upon.

The Court: The objection is sustained. He has already stated his own idea about it.

Mr. Dechter: I believe that is all. [224]

(Testimony of Walter J. Crown.)

Recross Examination

By Mr. Weymann:

Q. Mr. Crown, in arriving at your valuation for the production of this well, did you predicate that on the use of the equipment which was presently in the wall?

Mr. Dechter: To which we object on the ground that it is improper recross examination. There was nothing asked on redirect. Every objection was sustained.

Mr. Weymann: The question was asked whether he excluded the value of the equipment.

The Court: Will you read the question?

(Question read.)

Mr. Dechter: I will offer the further objection that it has been asked and answered by Mr. Weymann on cross examination.

The Court: I think it has. Objection sustained.

Mr. Weymann: Very well. No further questions.

The Court: That is all, Mr. Crown.

Mr. Dechter: I will call Mr. Bauer.

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA, for the use
of RECONSTRUCTION FINANCE COR-
PORATION, a Federal Corporation, acting in
behalf of DEFENSE PLANT CORPORA-
TION, a Federal Corporation,

Appellant,

vs.

SAM BLOCK,

Appellee.

Transcript of Record
In Two Volumes
VOLUME II
Pages 265 to 551

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

MAY 20 1946

No. 11282

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Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

ROY M. BAUER,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Roy M. Bauer.

Direct Examination

By Mr. Dechter:

Q. What is your business, Mr. Bauer?

A. I am gas supply supervisor of the Southern California Gas Company, Southern Counties Gas Company, and Pacific Lighting Corporation, all of Los Angeles.

Q. How long have you so been employed?

A. I started with predecessor companies a little over 21 years ago.

Q. And in connection with your position, will you please state to the court and jury what your duties are insofar as the handling of gas from its source of supply to dispensing the same?

A. I am in direct charge of all gas dispatching operations of the three corporations and all gas purchase accounting of the Southern California Gas Company. I also handle a great mass of statistical information and consolidated figures for the several companies. [226]

Q. And do your duties embrace the Playa del Ray gas reservoir?

A. In so far as requesting gas storage or requesting withdrawal and keeping track of same.

Q. In other words, you are the one who has

(Testimony of Roy M. Bauer.)

charge of how much gas is injected in the reservoir and how much gas is withdrawn from the Playa del Rey reservoir?

A. Yes, currently. I do not set the policies, but I request the changes to be made from day to day and time to time.

Q. In connection with the use of this gas reservoir as a gas storage project will you please state to the court and jury what the arrangement is for the use of that reservoir for gas storage?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial, and having no bearing on the issues in this case; not the slightest bearing on the value of the property taken in this proceedings.

Mr. Dechter: Your Honor, this ties in with the production subsequent to the time the Defense Plant took it over. Mr. Weymann has made the statement that that production might be due to other reasons. I think he has a perfect right to show what those other reasons are to show what that additional cost might be to get that additional oil. if there is such additional oil. We have here the person in charge of these gas [227] operations for the gas company who supplies the gas and withdraws the gas, and who is familiar with the arrangement with the Defense Plant Corporation as to whether they charge the Defense Plant Corporation anything for this gas, or whether there is no charge, or whether they, in turn, pay the Defense Plant Corporation for storing the gas so that the Defense

(Testimony of Roy M. Bauer.)

Plant in addition not only gets what the gas company pays them for storage, but gets this oil and additional gasoline. I think it is material from that standpoint.

The Court: Well, it seems to the court from your statement, Mr. Dechter, that it is anticipatory of something that the government may bring up or may not bring up. This may be admissible upon the rebuttal part of your case, but at present it seems to the court that the objection is good.

Mr. Dechter: Very well.

Q. By Mr. Dechter: Mr. Bauer, I will ask you if based upon your experience there has prevailed in Southern California a condition each winter during the cold weather where there has been a shortage of natural gas to such an extent that it has been necessary to deprive industrial users of natural gas in order to furnish domestic users of natural gas?

A. Yes——

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and no proper foundation laid or the question; no bearing on the issues in this case. [228]

The Court: I think the objection is not good except possibly as to the foundation, as to the experience of this witness with this type of demand.

Mr. Dechter: I will be glad to go into the foundation further, your Honor.

Q. By Mr. Dechter: Mr. Bauer, these three companies by whom you are employed, what portion of the total natural gas consumed in Southern California is supplied by them, if you know?

(Testimony of Roy M. Bauer.)

A. In excess of 90 per cent.

The Court: Mr. Dechter, I think it can be shortened by asking Mr. Bauer if he knows approximately the quantity of gas consumed in Southern California in the wintertime. Do you, Mr. Bauer?

The Witness: Yes.

The Court: And over how long a period have you known that?

The Witness: I have been making studies of peak day requirements——

The Court: Of what?

The Witness: Peak day requirements, that is the coldest period of the winter, for at least 8, 10 years.

The Court: When you say "peak," do you mean the peak of your own supply?

The Witness: Supply, yes.

The Court: And that is over 8 to 10 years, you say? [229]

The Witness: Yes, that is one of my duties, to make up reports of the past operations and anticipated coming winter operations.

The Court: Do you know the approximate relative amount of the supply and demand in the various seasons of the year in Southern California?

The Witness: I can give you general figures.

The Court: No, I don't mean for you to give it. I am just asking if you know.

The Witness: Yes, I do know.

The Court: That has been your business to determine those things, hasn't it?

(Testimony of Roy M. Bauer.)

The Witness: That is one of the functions of my work, yes.

The Court: I think the objection should be overruled. You may reframe your question.

Mr. Dechter: I think the question was partially answered, your Honor, but I will reframe it again.

Q. By Mr. Dechter: Mr. Bauer, I will ask you if it isn't a fact that there has prevailed in Southern California during the last 10 years, approximately, during the cold weather in the winter a shortage of natural gas so that it has been necessary to curtail the demands of industrial users of natural gas in order to supply domestic users of natural gas?

The Court: Before you answer that, in the first place, [230] Mr. Dechter, if that is a question of importance it shouldn't be put in the leading form in which you asked the question.

Mr. Weymann, would you like to have any voir dire examination of the witness?

Mr. Weymann: No, I would not, your Honor. I concede his qualifications.

Mr. Dechter: I was trying to shorten it. I didn't ask it as a leading question before.

The Court: This time you did, though.

Mr. Dechter: Yes. I will withdraw the question.

Q. By Mr. Dechter: Will you please state to the court and jury what the general prevailing condition has been during the winter months in Southern California for the last 10 years as to the availability of natural gas to supply both domestic and industrial users of natural gas?

Mr. Weymann: May we have a general excep-

(Testimony of Roy M. Bauer.)

tion to this entire line of questions so it won't be necessary to object?

The Court: You mean objection to it?

Mr. Weymann: Yes, I object to the relevancy of the question.

The Court: Yes. It is overruled. You may answer it.

A. At no time since particularly January, 1937, to my knowledge, has there been an adequate supply for all firm customers, principally domestic and commercial users. All peak days and days of heavy demand there has been a deficiency [231] to take care of—let me say it this way: There has been inadequate supplies to handle the potential demand in this area, necessitating the curtailment on certain days of some classes of surplus industrial users.

Q. By Mr. Dechter: And based upon your experience and knowledge in the gas industry, did there exist prior to September, 1942, a need for an underground gas reservoir where surplus gas might be stored and used during those peak winter days?

A. Yes, as far as I can recall there has been some need of additional supplies on peak days for a number of years.

Q. And are you able to state to the court and jury what advantages, if any, exist in the use of an underground gas reservoir as compared to the use of surface storage?

A. In respect to surface storage as we have it in this area, you withdraw gas during the day light hours when the largest demand occurs and store

(Testimony of Roy M. Bauer.)

gas during the night hours or periods of very low demand, principally after midnight. The capacity of those reservoirs, above ground reservoirs, to deliver in most cases is dependent upon compressor capacity. In the case of underground reservoirs we are able to store during the summer months when the firm demands of domestic and commercial customers are at their lowest period and withdraw during the winter months when more gas is required in this general area. That condition is partially brought about by [232] the fact that most of the gas delivered to Southern California districts is oil well gas or gas produced in conjunction with crude oil, and the gas companies do not own or control such gas, and therefore take what is available after field operations and gasoline plant operation requirements are taken care of, so it is necessary for us to augment in several different ways in order to take care of the firm demands on those days of heavy demand.

The Court: Mr. Bauer, is it or is it not a fact—state whichever it may be—whether you can expect greater pressure in the underground storage or the above-ground storage?

The Witness: Underground storage has the greater pressure.

The Court: Does that or does that not mean that with the same capacity in cubic feet you can get more gas in the underground storage because of the fact that greater pressure may be exerted? Is that correct?

(Testimony of Roy M. Bauer.)

The Witness: That is correct.

Q. By Mr. Dechter: Is there any advantage from a fire safety standpoint on the use of underground storage for gas as compared to surface storage for gas? A. I don't think so.

Q. Is there any advantage in the cost of acquiring gas storage as between surface storage and underground storage [233] for the purpose of storing a like amount of gas in each reservoir?

A. I don't think I am qualified to answer that.

The Court: Anything further, Mr. Dechter?

Mr. Dechter: No, your Honor; but I would like to have Mr. Bauer on call. In other words, he might be excused subject to call on rebuttal, following your Honor's indicated ruling in case it becomes necessary.

The Court: That is a matter you may argue with Mr. Bauer. I don't know whether he will be here where he can be called by telephone or not. You can make that arrangement yourself.

Mr. Weymann: I have no questions.

The Court: You are excused, Mr. Bauer.

Mr. Dechter: At this time, your Honor, the defendant rests.

Mr. Weymann: At this time I would like to offer in evidence Plaintiff's Exhibit 1, which was offered for identification.

The Court: Mr. Dechter, I believe, didn't hear that at all. Mr. Weymann has offered in evidence Plaintiff's Exhibit 1 for identification.

Mr. Weymann: It was offered for identification; I am now offering it in evidence.

The Court: What is that? [234]

Mr. Weymann: I am now offering it in evidence.

The Court: That is right.

Mr. Dechter: No objection.

The Court: It may be so received.

(Whereupon, the document, heretofore marked as Plaintiff's Exhibit No. 1 for identification, was received in evidence.)

PLAINTIFF'S EXHIBIT No. 1

RESOLUTION

Whereas, Defense Plant Corporation, a corporation created pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, deems it necessary for war purposes to acquire certain lands in the vicinity of Los Angeles, California, (Playa Del Rey Gas Storage Project, Plancor 1406) for use as a storage reservoir for natural gas; and

Whereas, Defense Plant Corporation has been unable to acquire title by purchase to the lands required for said storage reservoir, which lands are fully described in Exhibit "A" attached hereto and made a part hereof; and

Whereas, This Corporation has been requested by Defense Plant Corporation to cause condemnation proceedings to be instituted in the name of the United States pursuant to the provisions of the

act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, issued by the President of the United States on August 7, 1942, by virtue of and pursuant to authority vested in him pursuant to said Public Law 507, 77th Congress, *supra*;

Whereas, Defense Plant Corporation has agreed to make available the funds necessary to pay the costs of acquiring by condemnation the lands described in said Exhibit "A";

Resolved First, It is necessary for War purposes that the lands described in Exhibit "A" be acquired by condemnation proceedings and in connection therewith that the immediate right to occupy, use and improve such lands be granted.

Resolved Second, The Secretary or Assistant Secretary of this Corporation be and hereby are authorized and directed to request the Attorney General of the United States to cause the necessary proceedings to be instituted for the condemnation of such lands and further, to cause the necessary action to be taken to procure a court order granting immediate right to [50] occupy, use and improve the lands described in Exhibit "A," pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, issued by the President of the United States on August 7, 1942, by virtue of and in pursuance to authority vested in him pursuant to said Public Law 507, 77th Congress, *supra*.

Resolved Third, That the General Counsel or an Assistant General Counsel of this Corporation is hereby authorized and directed to take all necessary and appropriate action to carry out the instructions and authorizations provided in this resolution.

* * * *

The foregoing resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 18th day of September, 1942.

[Seal] LEO NIELSON,

Assistant Secretary, Reconstruction Finance Corporation, Plancor 1406.

Mr. Dechter: May I reopen my defense, your Honor, in connection with that offer to offer the amended resolution of the R.F.C. of October 4, 1943, which copy has been furnished to me by Mr. Weymann?

The Court: Yes, you may make the offer.

Mr. Weymann: I have no objection.

The Court: Let it be received and marked as Defendant's Exhibit B.

(Whereupon, the document referred to was marked as Defendant's Exhibit B, and was received in evidence.)

DEFENDANT'S EXHIBIT "B"

AMENDATORY RESOLUTION

Whereas, This Corporation at the request of Defense Plant Corporation, has caused condemnation proceedings to be instituted in the name of the United States for the purpose of obtaining title to certain lands required as a storage reservoir for natural gas (Playa Del Rey Natural Gas Storage Project—Plancor 1406), which lands are described in the Exhibit "A" attached to the Declaration of Taking forwarded to the Department of Justice on October 22, 1942; and

Whereas, Defense Plant Corporation has taken possession of and desires to acquire by condemnation title to certain machinery and equipment located upon said lands and has requested this Corporation to request the Department of Justice to amend the petition filed for the condemnation of said lands so as to include certain machinery and equipment located upon the said land, which machinery and equipment is described in the attached Exhibit "C."

Resolved, That the resolution adopted by the Board of Directors of this Corporation on September 18, 1942, as amended, be and hereby is further amended by adding thereto a Resolved Seventh and Resolved Eighth to read in full as follows:

"Resolved Seventh, That it is necessary and advantageous in carrying out the authority vested in Defense Plant Corporation to acquire by con-

demnation the machinery and equipment described in said Exhibit 'C.'

“Resolved Eighth, That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to request the Attorney General of the United States to take such action as may be necessary for the acquisition by condemnation of the machinery and equipment described in said Exhibit 'C.' ”

* * * *

The foregoing resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 4th day of October, 1943.

[Seal] /s/ A. T. HOBSON,
Secretary, Reconstruction Finance Corporation.

The Court: You may proceed.

Mr. Weymann: I now offer as Plaintiff's Exhibit next in order a copy of an oil and gas lease dated November 13, 1934, between W. H. Comstock as receiver of the United States Building and Loan Association of Los Angeles as lessor and H. G. Spangler as lessee, being the master lease in this proceeding from which Mr. Dechter read excerpts yesterday.

Mr. Dechter: Your Honor, I will not object because it is [235] not an original or a certified copy, but I would like the reservation of the right to

make any correction in the event it becomes necessary.

The Court: You may have that privilege.

Mr. Weymann: It is so stipulated.

The Court: Let it be received and marked as Plaintiff's Exhibit 7.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 7, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 7

Paragraphs 17 and 22 of Oil and Gas Lease From W. H. Comstock, as Receiver, as Lessor, to H. G. Spengler, as Lessee, Being Plaintiff's Exhibit 7 in Evidence.

17. On the expiration of this lease, or if sooner terminated, the Lessee shall quietly and peacefully surrender possession of the premises to the Lessor and deliver to him a good and sufficient quit-claim deed and shall, so far as practicable, cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, if the Lessor desires to retain the same, he may notify the Lessee to that effect and thereupon the Lessee shall leave such casings in the well as the Lessor may require, and the Lessor shall pay to the Lessee 50% of the original cost of such casings on the ground.

22. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to the heirs, executors, administra-

tors, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the Lessee until after the Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment.

Mr. Weymann: Mr. Oliver, will you take the stand, please?

GRAYDON OLIVER,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Graydon Oliver.

Direct Examination

By Mr. Weymann:

Q. What is your business or occupation, Mr. Oliver?

A. I am a consulting petroleum engineer.

Q. Do you maintain an office in Los Angeles?

A. Yes, I maintain my headquarters office in Los Angeles with field offices in different sections of the State.

Q. How long have you been so engaged?

A. I have been engaged in private practice for approximately [236] 17 years. I have been con-

(Testimony of Graydon Oliver.)

sidered as a petroleum engineer since my graduation from the University of California in 1917.

Q. Will you kindly state your professional experience and qualifications, briefly?

A. I am considered as a technician in the oil industry. I have been engaged in various types of oil technology covering the production, drilling, valuation, sub-surface engineering, reservoir engineering, and special problem work of one type or another.

Q. Are you a member of any professional societies?

A. I am a member of the American Association of Petroleum Geologists, the American Institute of Mining and Metallurgical Engineers, the American Society of Civil Engineers, the American Petroleum Institute, the California Natural Gasoline Association; maybe some others, I don't know.

Q. Have you been associated with any technical school or institution?

A. Why, I was at one time an instructor in natural gas engineering and liquid petroleum gas engineering in the Extension Division of the University of California.

Q. Have you been employed in and about the valuation of oil producing properties?

A. Yes, I have been engaged in the valuation of oil [237] producing properties ever since entering into private practice, having probably valued several hundred different properties ranging from

(Testimony of Graydon Oliver.)

probably a maximum value of \$40,000,000.00 on down. [238]

Q. Will you name some of the firms and corporations by whom you have been employed?

A. During the year 1945 I have been employed by a great many firms in a consulting capacity including the Continental Oil Company, Barnsdall Oil Company, Wilshire Oil Company, Lloyd Corporation, South Basin Oil Company, Union Pacific Railroad Company, Southern California Edison Company, Standard Oil Company of California, Atlas Productions, Incorporated, and probably some 25 or 30 others.

Q. You were requested by the Department of Justice to make a survey and inspection of the subject property, Mr. Oliver? A. I was.

Q. For the purpose of forming an opinion as to the market value of this property as of September 28, 1942? A. I was.

Q. And in that connection will you please tell the court and jury what you did?

A. I was engaged to make a study of the Playa del Rey oil field, particularly the properties acquired by the United States Government and assumed by the Defense Plant Corporation as of September 28, 1942. This investigation included a sub-surface study of the reservoir itself, the valuation of the reserves of oil and gas incidental to the property as a whole and to the wells individually; a study [239] of the physical properties at or on the premises as of September 28, 1942, and to inte-

(Testimony of Graydon Oliver.)

grate these various parts into conclusions as to value as of the effective date of September 28, 1942.

In this study I undertook to establish the recoverable oil incidental to the reservoir as a whole and to the individual wells to forecast the probable return to the lessee and lessor and arrive at a conclusion of values both as to ultimate return and as to fair market value so as to guide the Department of Justice in the settlement of the claims that may be presented to them.

Q. And before forming your opinion, Mr. Oliver, what facts and factors did you take into consideration?

A. I had all the records of drilling completion and production of each and every well in the area from the time of its completion until September 28, 1942; all the sub-surface information, a great deal of the geological information, and a great deal of evidence relative to the cores taken from the individual wells. Much of this information was obtained from the files of the Mining Bureau of the State of California, and much of it from the companies themselves.

Q. And on the basis of your investigation and your experience, have you formed an opinion, first, as to the value of the 10 7/12ths overriding royalty of Mr. Block; and, secondly, as to the value of the 70 per cent leasehold [240] estate?

A. I have.

Q. Will you kindly state what, in your estima-

(Testimony of Graydon Oliver.)

tion, your opinion, is the fair market value of the 10 7/12ths per cent overriding royalty?

A. The record of ownership——

The Court: Oh, no, Mr. Oliver. Pardon the interruption, but if you will pay attention to this question, I think it will be a much simpler answer than the one you are apparently about to give. Read the question, please.

(Question read.)

The Court: That is of September 28, 1942.

Mr. Weymann: Of September 28, 1942.

The Witness: I was just going to explain my answer.

The Court: You don't have to explain it. Just give the amount in dollars first, Mr. Oliver.

The Witness: I arrived at the conclusion that the fair market value as of September 28, 1942, approximated \$131.00 royalty per cent.

The Court: What is the total?

The Witness: The 10 7/12ths per cent multiplied by \$131.00.

The Court: Will you multiply it there if you have some paper? Here is a piece of paper if you don't have any.

The Witness: Thank you. That would approximate [241] \$1,388.00.

Q. By Mr. Weymann: Now, Mr. Oliver, have you anything further to add in explanation of how you arrived at that?

The Court: I think you should ask him about it if you desire him to give his explanation.

(Testimony of Graydon Oliver.)

Mr. Weymann: Then, I will withhold that until I get the other valuation and ask him then.

The Court: Well, use your own judgment, Mr. Weymann.

Mr. Weymann: Thank you.

Q. Have you formed an opinion as to the fair market value of the 70 per cent operators' interest? A. I have.

Q. As of September 28, 1942? A. I have.

Q. Will you state what that valuation is?

A. I have the opinion that the 70 per cent working interest of the Block's Oil Company in the Colly No. 10 well has a probable fair market value as of September 28, 1942, of \$5,650.00. This amount is arrived at by the summation of the market value of the oil reserves approximating \$3,150.00, and the salvage value of the equipment after paying abandonment cost of \$2500.00.

The Court: Will you read the entire answer, Miss Reporter?

(Answer read.) [242]

Q. By Mr. Weymann: Now, Mr. Oliver, will you tell us, please, how you arrived at your opinion of those valuations, the processes which you went through, taking first the operators' interest of 70 per cent?

A. My methods of arriving at the conclusion of value which I have just presented were contained in a letter addressed to Mr. Eugene D. Williams, which is as follows:

“This report is an analytical——”

(Testimony of Graydon Oliver.)

Mr. Dechter: We will object, your Honor, to the use of any report or paper unless a foundation is laid.

Mr. Weymann: Very well.

Q. Mr. Oliver, the papers from which you are reading, will you tell us what those are?

A. They are a report addressed to Mr. Eugene D. Williams, Special Assistant to the Attorney General, United States Department of Justice, Lands Division, 808 Federal Building, Los Angeles 12, California, covering an analytical engineering valuation of the oil reserves and properties incidental to the Block's Oil Company Colly No. 10 well.

Q. Was that report compiled by you?

A. It was.

Q. And does it contain all the data upon which you based your opinion? A. It does.

Mr. Dechter: I think opposing counsel should be permitted [243] to see a document before it is used.

The Court: You have a right to see it.

Mr. Weymann: I am going to offer it in evidence.

Mr. Dechter: May I see it? It is customary to first show it to counsel.

Mr. Weymann: Surely.

The Court: Well, it isn't to be offered in evidence. He is just using it for refreshing his recollection, apparently, to save time. You have a right to see it if you desire.

Mr. Dechter: Yes, I would like to.

(Testimony of Graydon Oliver.)

The Court: Just go over and look at it.

Mr. Weymann: I will let him have a copy of it, if it will save time.

The Court: Mr. Oliver, was that made under your direction or was it made by you?

The Witness: It was made by me.

The Court: You wrote it out yourself?

The Witness: Yes, sir.

The Court: Do you have a copy of it?

The Witness: Yes.

The Court: Just give it to Mr. Dechter and he may sit down there at the desk and look at it.

Mr. Dechter: Yes. It appears to be a mimeographed copy. [244]

Q. By Mr. Weymann: Do you have another copy of that with you, Mr. Oliver?

A. Yes, I do (handing document).

The Court: Well, is that entire instrument with reference to the property in question here, Mr. Oliver?

The Witness: It is, sir.

The Court: Let me see it. I am only asking this to save time. It seems to the court it is rather extensive.

The Witness: It is a valuation of the oil property, sir.

The Court: Mr. Weymann, it seems to the court that this could be shortened if you would ask him what he did, if he will state what he did without going into so much detail.

Mr. Weymann: Well, if the court please, I in-

(Testimony of Graydon Oliver.)

tend to carry him through that because there are many facts and factors of great importance.

The Court: Well, the court will take a recess for a few minutes to give Mr. Dechter time to look it over. There may be no objection to his reading it into the record.

Mr. Weymann: I think that would shorten the time.

The Court: It will shorten the time provided there will be no objection. The court will recess for a few minutes. The jury will bear in mind the admonition of the court.

(Short recess.) [245]

The Court: The jurors are all present and in their places. Is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: You may proceed.

(The last question and answer thereto were read.)

Mr. Dechter: We will object to the use of the report upon the ground that it is not any more than a self-serving document, contains a mass of hearsay testimony, conclusions which are not conclusions of an expert.

The Court: If you object to it, I think your objection is good. There is no reason that the witness should not refer to it if it is necessary for him to refer to any notes which were made by him.

(Testimony of Graydon Oliver.)

Mr. Dechter: I have no objection to his using any notes made by him.

The Court: Yes. But as far as reading is concerned, it is objectionable.

Mr. Weymann: May we have an exception, please.

Q. By Mr. Weymann: Mr. Oliver, in your opinion what facts are necessary for an informed buyer to have in the purchase of a producing property, what facts would he require?

A. He would have to have some form of an estimate of the future production that might be obtained from the property, whether it would be one well or more than one well, the cost of [246] producing that oil during the interval of time that the production was economical, the net return that would accrue to the buyer from the production of the oil after paying the production cost, the year in which that payment might accrue and the present worth of the moneys so paid in any particular year. He would also have to know the conditions surrounding the reservoir from which that oil was obtained. He would have to know the geology surrounding the reservoir and the well itself, whether the well was in good mechanical condition, was capable of continued production during the anticipated years of life; whether the formations themselves would yield that oil to the well, or the formations would be robbed of the oil content by other wells in the immediate vicinity. He would have to know the probable market price of

(Testimony of Graydon Oliver.)

the oil at the time he acquired the property, so that he could judge what his investment might be. He would also have to know the terms of the lease under which he was to operate; if it were an operating property, what terms he would have to live up to, whether there were any drilling obligations. He would have to know the amount of water that the well makes, in order to ascertain whether the oil was gradually declining in oil production and increasing in water production to the point where there would be an exclusion of the oil and 100 per cent production of the water. It is very difficult to sit here and recite to you all of the different conditions that an interested [247] party might have to take into consideration.

The Court: You have made quite a number of them. Did you advise yourself with regard to all those matters as of the 28th day of September, 1942, Mr. Oliver?

The Witness: I did.

The Court: And upon those investigations and your knowledge of the oil business, your knowledge of geology—did you state you are a geologist?

The Witness: I am a petroleum engineer, which geology is a tool to our profession.

The Court: Yes, your knowledge of the science of petroleum engineering, upon all those things, did you base your estimate of the valuation?

The Witness: I took all of those matters into consideration, yes, your Honor.

The Court: Go ahead, Mr. Weymann.

(Testimony of Graydon Oliver.)

Q. By Mr. Weymann: Did you also take into consideration the past history of the well from the time of its completion?

A. Yes, I took into consideration the history of production of the well from the time it was completed in 1935 month by month up to September 28th, 1942.

Q. And do you have the record of the production of that well from the time of its completion up to September 28, 1942? A. I do.

Q. Will you let us have that record of the production of [248] oil, of gas, and of water.

Q. I have that tabulated month by month, year by year, for the net oil produced and the total water produced as shown by the records of the well. I also have it in chart form showing the oil produced, water produced, and gas produced. I will first give you the oil and water month by month in barrels. May, 1935—

Mr. Dechter: If counsel has such a chart, I have no objection to his using it, your Honor.

Mr. Weymann: Very well. It will simplify it.

Q. By Mr. Weymann: Have you such a chart, Mr. Oliver? A. I do.

Q. Let me ask you, Mr. Oliver, was this chart made by you or under your supervision and based upon your examination? A. It was.

Mr. Weymann: Would you like to see this?

Mr. Dechter: I didn't have this in mind. I had in mind the tabulation month by month of production, which I think would be more understandable

(Testimony of Graydon Oliver.)

by the jury. However, I have no objection to this also being used, but I think it would be more clear in giving the number of barrels in dollars and cents month by month. [249]

The Court: What Mr. Dechter had in mind, and I believe what Mr. Oliver was referring to, is that contained beginning on page 10 of this report, Mr. Oliver?

The Witness: Beginning on page 15, your Honor.

The Court: Beginning on page 15?

The Witness: No, on page 16, rather, pages 16, 17, and 18 of my report.

The Court: Now, I think this is what Mr. Dechter had in mind and then when the reference was made to the chart, this chart shows the outline of the rise and fall of the production taken from this record here that you referred to, does it, Mr. Oliver?

The Witness: Yes, sir.

The Court: So it will only be illustrative?

Mr. Weymann: Yes, a graphic illustration.

The Court: But this will be the record itself?

Mr. Weymann: The record itself.

The Court: Now, may we save time and have this referred to or received in evidence? What method would you suggest?

Mr. Dechter: I have no objection to counsel withdrawing those pages and offering them in evidence as the figures that Mr. Oliver used in arriving

(Testimony of Graydon Oliver.)

at his opinion, showing what the past production was.

Mr. Weymann: Well, I accept the offer then.

The Court: What pages, Mr. Oliver?

The Witness: 16, 17 and 18.

The Court: They may be received as Government's Exhibit 8.

(The documents referred to were marked as Plaintiff's Exhibit No. 8, and were received in evidence.)

PLAINTIFF'S EXHIBIT No. 8

SUMMARY OF PRODUCTION, BY MONTHS

BLOCK'S OIL COMPANY, COLLY No. 10 WELL

Showing Net Oil and Total Water, in Barrels

Months	1935		1936		1937	
	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels
January			3229	62	1756	199
February			3631	48	1543	172
March			3599	108	1629	181
April			2917	110	1537	174
May	745	372	2956	141	1452	165
June	47502	—	2013	124	1095	208
July	11254	50	2346	176	1160	220
August	6460	92	2209	243	1566	339
September	5650	57	1823	202	1843	382
October	3411	37	1530	170	1774	358
November	5243	45	1720	191	1663	355
December	3492	86	1806	201	1339	374
	83757		29779		18357	

(Testimony of Graydon Oliver.)

Months	1938		1939		1940	
	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels
January	1648	478	1192	1015	623	792
February	1447	453	1049	1049	428	545
March	1461	461	1159	1159	478	608
April	1382	486	999	999	632	804
May	1706	675	1046	1046	522	783
June	1536	639	987	987	605	907
July	1287	931	1022	1300	584	896
August	1446	886	1012	1288	793	1189
September	1367	873	927	1180	737	491
October	1187	932	943	1200	860	1290
November	930	760	926	1178	687	1030
December	1372	914	567	721	570	855
	16769		11829		7519	

Months	1941		1942		1943	
	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels	Net Oil Barrels	Total Wtr. Barrels
January	565	848	479	720	822	1717
February	561	841	539	808	603	1824
March	911	1365	600	900	688	2323
April	898	1347	701	1051	836	2189
May	688	1032	491	736	551	2401
June	313	468	630	945	624	2163
July	434	651	632	2528		
August	516	774	405	1620		
Septemeber	417	625	436	1622		
October	563	844	771	1726		
November	306	459	600	1957		
December	442	663	971	1520		
	6614		7255			

(Testimony of Graydon Oliver.)

The Court: Mr. Oliver has given me one of these reports and I just turned it over to Mr. Clifton and he may take those pages out and that will be the exhibit.

Q. By Mr. Weymann: Now, Mr. Oliver, I show you a graphic graph or chart showing the production month to month of the gas, oil and water. Was that made by you and under your supervision?

A. It was.

Mr. Weymann: I want to offer this in evidence, if the court please.

The Court: I believe Mr. Dechter said he had no objection, but it seems to the court that it should be received for illustrative purposes only. It was made from this record?

Mr. Weymann: That is correct.

The Court: It may be so received and marked Plaintiff's Exhibit 9 for illustrative purposes.

(The document referred to was marked as Plaintiff's Exhibit No. 9, and was received in evidence, for illustrative purposes.) [251]

Mr. Weymann: May we put that up here, if the court please?

The Court: Yes; will you assist him, Mr. Welch, please?

Q. By Mr. Weymann: Now, would you mind stepping to the board, Mr. Oliver, and explain to the jury how this chart illustrates the figures which have been set forth in your tabulation which is now in evidence?

(Testimony of Graydon Oliver.)

(Thereupon, the witness approached the blackboard.)

A. This chart was compiled——

Q. Pardon me a moment. I wonder if everyone can see that?

A Juror: We can't see the lines.

Another Juror: Draw it out.

The Witness: This chart was compiled merely to illustrate graphically the history of production of the so-called Block Colly No. 10 well. In black ink has been plotted month by month the net barrels of oil produced by the well. In red ink has been plotted the amount of water in barrels produced by the well. In green ink has been plotted the amount of natural gas in thousands of cubic feet produced by the well along with the oil.

The values are given on the left-hand index and the periods of time starting in 1935 and continuing until about May 19, 1943, are shown. The black line is to illustrate the [252] date of acquisition by the Defense Plant Corporation, representing September 28, 1942.

This curve, the black curve, shows the well having been produced initially at a relatively high rate in barrels per month and gradually declining over a period of time until taken over by the Defense Plant Corporation on September 28, 1942. The water is almost negligible in the initial stages of production of the well, and gradually increases with time until on the date of acquisition, September 28, 1942, the amount of water produced was approxi-

(Testimony of Graydon Oliver.)

mately 80 per cent of the total fluid. The amount of gas shows a relatively high value at the beginning of production and gradually declines to a relatively small amount at the time of acquisition by the Defense Plant Corporation.

This material was later plotted, particularly the oil productions and the relative gas ratios were plotted into what a valuation engineer terms a decline curve, and using this past history of production which has drawn a very definite pattern starting from a relatively high value and extending to a relatively low value have forecasted what the well would probably produce during its future life if continued under identical reservoir conditions as were evident on September 28, 1942.

No consideration, of course, was given to the value [253] subsequent to September 28, 1942, as new reservoir conditions existed which were not contemplated as of the date of acquisition by the operator himself.

Mr. Dechter: We move to strike out that last statement.

Mr. Weymann: It may go out.

The Court: It may go out.

The Witness: From the compilation of this decline curve we then forecasted the amount of oil to be produced by the well over the future period of years. That forecast was given in my report by years. For instance, the total oil produced actually by history in 1941 was 6614 barrels. In 1942, which included approximately three months after

(Testimony of Graydon Oliver.)

repressuring started, the total production was 7,255 barrels.

Mr. Dechter: Pardon me. May I have the last statement read, Miss Reporter?

(Record read.)

Mr. Dechter: We move to strike that statement, your Honor, "after repressuring had been started." No proper foundation has been laid, and on the ground that it is not responsive to the question as to the reasons for his valuation.

Q. By Mr. Weymann: In your opinion, Mr. Oliver, are you familiar with the repressuring program done in the Playa del Rey field? [254]

A. I am.

Q. In your opinion did the repressuring have any effect on the production from that well?

A. Yes, it had some effect on the production subsequent to September 28, 1942, upon the Colly No. 10 well.

Q. Will you please explain to the jury how that effect is accomplished?

A. The Playa del Rey area is an oil field which had originally contained oil and gas. The oil and gas was produced over a period of years until the field on September 28, 1942, was to a large extent depleted, not entirely depleted, but to a large extent depleted. The oil and gas had been removed and the space formerly occupied by that oil and gas had to a large extent been replaced by water.

Certain wells which were originally on the edge of production were maintained producing a mixture

(Testimony of Graydon Oliver.)

of oil and water, the water gradually encroaching on to the oil sands and washing the oil sands. These were known as "stripper wells." [255]

The water table was gradually increasing all around the fringes of the structure. After the injection of gas into the top of the structure, just the same as if you might inject gas into the top of an inverted bowl, the pressure created by the injection of that gas forced some of the oil to go back down the dip so that additional pressures were visible and apparent at the wells on the edge of the structure. Sometimes these pressures were measurable and other times they were not particularly measurable, but in almost all instances where the wells on the fringes of the structure were maintained in production a slight increase in the production was noted. Wells on the top of the structure were used primarily for gas injection. Several wells were used. I have forgotten now the exact number; I have them in my notes; and these wells were not used for the production of oil at all, gas was injected into them and gas was returned out of them, but they being in the gas zone entirely did not produce any oil.

Wells such as the Block No. 10 well never had gas injected into it, it was used primarily as a producing well on the edge of the structure and oil was taken from the well all of the time—I believe has been taken constantly since the gas project started.

The Court: Mr. Oliver, before you go further,

(Testimony of Graydon Oliver.)

I think you should explain, if it is a fact, that there was a connection underground between some of these wells. I don't believe [256] that appears.

The Witness: A reservoir such as the Playa del Rey reservoir was studied by many engineers using the physical logs taken by the drillers at the time of drilling, taking the electrical logs taken at the time of drilling, and the production characteristics of the well. The engineers studied all of these wells and concluded that a certain number of wells in a certain area were pressure-connected because the sands feeding those wells were more or less continuous. Some of the sands were encountered higher structurally than other sands.

The Court: That means there was a subterranean connection between some of these wells and that the pressure exerted at the top of the wells, as you have stated——

The Witness: Top of the structure.

The Court: Top of the structure in the well, that that would find its way into all the other wells which were so connected; is that correct?

The Witness: Yes, that is correct. That is what constitutes a reservoir.

The Court: I think there was a motion to strike and there was some questioning after that, apparently for the purpose of explanation. The court didn't rule upon the motion at the time. Would you like to have the court rule upon it?

Mr. Dechter: I will withdraw the motion, your Honor. [257]

(Testimony of Graydon Oliver.)

Q. By Mr. Weymann: Mr. Oliver, referring to your table of production of oil, gas and water, and the graphic chart representing that production, in your opinion has the conduct of the well from the time of its completion any significance in forecasting the future action, the future activity of that well?

Mr. Dechter: May I have that question?

The Court: Read it, please.

(The question was read.)

The Court: He has already so stated, Mr. Weymann.

Q. By Mr. Weymann: What in your opinion is the effect?

A. I don't quite understand you.

The Court: What he means, I think, Mr. Oliver, is if the normal course continues, what would be the result?

Is that what you have in mind?

Mr. Weymann: Yes.

Mr. Dechter: Your Honor, I am going to object to this line of questioning on the ground it is improper. I think counsel has a right to supplement the witness' declaration of his opinion by asking him to give the reasons on which he bases his opinion, but I don't believe anything else would be proper.

The Court: Yes, I think that is correct, Mr. Weymann. This is more in the nature of cross examination.

(Testimony of Graydon Oliver.)

Mr. Weymann: Very well. I will withdraw the question. [258]

The Court: The witness may be asked to give his reasons, and counsel may, of course, suggest at certain parts of the testimony some phases which may have been left out by the witness.

Q. By Mr. Weymann: Very well, Mr. Oliver, will you give your reasons for arriving at the conclusion as to value for the operating interests?

A. The pattern of decline as shown by the historical record of production of this well up to September 28, 1942 gave the indication as to the probable future productions that could be anticipated from this well over future years. Such a forecast was made and——

Q. By you?

A. By me. And it was estimated that the first year subsequent to September 28, 1942 the well would produce a total of 6400 barrels, the second year 5800 barrels, the third year 5300 barrels, the fourth year 4800 barrels, the fifth year 4400 barrels, the sixth year 4000 barrels, the seventh year 3700 barrels, the eighth year 3500 barrels. This in my opinion, was considered the economic limit of production, and the total amount of barrels for the eight years anticipated that the well would produce economically amounted to 37,900 barrels. The operator's share which was 70 per cent of the total amount of oil produced was taken of the 100 per cent forecasted and which I have just enumerated. [259] This 70 per cent amounted to 26,700 barrels.

(Testimony of Graydon Oliver.)

Now, we had to convert these barrels into money. The posted market price for oil similar to the production as of September 28, 1942 was 77 cents per barrel, which is the posted market price for 19-degree API gravity oil as of May 23, 1941. There has been no change in the posted price subsequent to May, and until September 28, 1942. In our investigation of the entire overall picture at Playa del Rey we found that the oil was being transported from the well to a refinery in the near vicinity and a transportation charge of 5 cents a barrel against that was being made, so that the operator was actually receiving instead of the posted market price of 77 cents a barrel, 72 cents a barrel in most instances. However, in the case of the Block Oil Company we found that his values of oil received at that time by selling to various other people, instead of being 72 cents a barrel approximated 80 cents per barrel, and this price was, accordingly, used.

Multiplying the 80 cents per barrel by the 70 per cent interest which he had gave the first year's income of \$3600.00, the second year's income \$3280.00, the third year's income \$2960.00, the fourth year's income \$2720.00, the fifth year's income \$2480.00, the sixth year's income \$2240.00, the seventh year's income \$2,080.00, and the eighth year's income \$2,000.00, making a total of \$21,360.00 gross return for the oil itself.

In addition, a small amount of revenue was obtained for [260] gas and gasoline incidental to the

(Testimony of Graydon Oliver.)

production of the oil. This was allocated upon a per barrel basis of two and eight-tenths cents per barrel, so that the total for the period of eight years amounted to \$760.00; and when added to the \$21,360.00 made the total return to the producer for the sale of his 70 per cent of the oil \$22,120.00.

Now, the producer by terms of the lease agreement must pay for the production costs of 100 per cent of the oil. These production costs have been accordingly estimated year by year. The first year they approximate \$1790.00, the second year \$1740.00, the third year \$1700.00, the fourth year \$1680.00, the fifth year \$1670.00, the sixth year \$1640.00, the seventh year \$1630.00, and the eighth year \$1610.00, for a total cost for lifting of \$13,460.00 for the eight-year period.

In addition to the lifting costs, the producer must pay for his proportion of the taxes and the dehydration of the wet oil to make it available for sale. Over the eight year period it has been estimated that this amount would approximate \$2740.00. Adding this \$2740.00 to the \$13,460.00 of estimated lifting costs gives a total cost that the producer must pay for the recovery of his 70 per cent of the oil of \$15,830.00. Year by year the costs were deducted from the total values so that the gross returns year by year to the operator are as follows: The first year \$1540.00, the second year \$1290.00, the third year \$1030.00, the fourth year \$840.00, the fifth [261] year \$630.00, the sixth year \$430.00, the seventh year \$290.00, the eighth year \$240.00,

(Testimony of Graydon Oliver.)

making a total for the eight years of operation gross return to the operator of \$6290.00.

This has been further reduced by discounting to present worth because a dollar payable eight years hence is not worth a dollar today. These values as just read were, accordingly, discounted with the appropriate discount factor, so that the present worth value of the future returns over the eight-year period are as follows: The first year \$1430.00, second year \$1110.00, third year \$820.00, fourth year \$620.00, fifth year \$430.00, sixth year \$270.00, seventh year \$170.00, eighth year \$130.00, making a total of \$4980.00.

This is the amount of money which if a purchaser were interested in would invest at a reasonable interest rate commensurate with those incidental to the oil industry approximating 7 per cent and he could expect to have returned to him by the operation of the well over the period of time that production was anticipated, and the hazard would be all his, so that he would ultimately get returned to him \$6290.00.

Naturally, a purchaser is not interested in trading dollars for merely a nominal interest rate, so any buyer would buy at some value less than the \$4980.00 which I have given you, and that will constitute the approximate market value which I have heretofore given you as \$3150.00.

Q. By Mr. Weymann: Mr. Oliver, you estimated the worth [262] of the operator's interest at \$5650.00. Will you please explain where the

(Testimony of Graydon Oliver.)

difference between the \$3150.00 and the \$5650.00 is found?

A. In the production of an oil well certain facilities must be utilized. An oil well is drilled and completed at a certain time. At that time production facilities are installed. These facilities include the pipe in the well, the liner, the derrick, the tanks in which the oil is produced into, the pipe lines connecting the well head with the tanks, and as time goes on and the well no longer flows pumps have to be installed with the necessary tubing, pump shoe, rods, and pumping units, and all other facilities that are necessary to the actual production of the oil. [263]

The Court: Was this well pumping on September 28, 1942, or was it flowing spontaneously?

The Witness: It was pumping your Honor. All this pumping equipment had to be used in order to obtain this production, and in the establishment of a value wherein we forecast future productions of oil year by year, it contemplates the continued use of this production equipment until the well is no longer capable of producing oil in commercial quantities. In other words, until the time when the production costs offset the revenue obtained from the sale of the producers share of the oil.

In the case of the Block Oil Company well all these facilities that are considered a part of the personal property of the well had to be maintained on the premises during the period that the anticipated life of the well had been contemplated in

(Testimony of Graydon Oliver.)

these valuation reports. In my particular valuation that period was 8 years. Other valuations may extend that life a year or two longer or a year or two shorter, but whatever the period may be, the production facilities must be maintained until the well is abandoned. When the well is abandoned, then these production facilities may be removed and sold and a certain salvage value obtained therefrom. Sometimes this salvage value is reasonable where the well has only been in operation for a relatively short time. [264]

Mr. Dechter: We will object to any evidence by this witness on salvage value on the ground that no proper foundation has been laid to qualify him as to values of personal property.

The Court: Sustained.

Mr. Weymann: I will qualify him.

Q. Mr. Oliver, in the course of your experience——

The Court: If you are not referring to the chart any further, you may take your seat in the witness chair, Mr. Oliver.

(Thereupon, the witness returned to the witness chair.)

Q. By Mr. Weymann: Mr. Oliver, in the course of your professional experience, have you supervised the production and abandonment of any oil wells?

A. I have.

Q. What length of time?

A. Oh, a continued period of time. We are

(Testimony of Graydon Oliver.)

constantly doing that type of work. I happen to be a partner in the O. H. Drilling Company engaged in the drilling of wells.

Q. About how many wells have you supervised?

A. They vary some from time to time. I really couldn't make an estimate right at the present time as to the number.

Q. Oh, approximately.

A. We probably have 25 to 30 at the present time or [265] something of that sort.

Q. Have you supervised the abandonment of any wells? A. Yes.

Q. And have you had occasion to determine the salvage value of the equipment in the wells that you——

Mr. Dechter: What is that question? Will you read it?

Mr. Weymann: I haven't finished the question.

Mr. Dechter: It is hard for me to hear you, Mr. Weymann.

Q. By Mr. Weymann: Have you had occasion to supervise the abandonment of any wells in the course of your professional experience?

A. I have.

Q. And in such abandonment, have you acquired any knowledge of the salvage value of the equipment so abandoned? A. I have.

Mr. Weymann: I think the witness is qualified to determine the salvage value.

Mr. Dechter: May I examine the witness on voir dire, your Honor?

(Testimony of Graydon Oliver.)

The Court: You may.

Q. By Mr. Dechter: Mr. Oliver, have you ever been in the business of buying and selling used oil well equipment?

A. I have not. Wait a minute, I beg your pardon, Mr. Dechter. I have been in the business of buying used oil [266] well equipment. I bought from your man, Mr. Rush, here just a very short time ago, some used equipment.

Q. In connection with what operation did you have occasion to buy any used oil well equipment?

A. In connection with a well I was drilling up in Rio Vista.

Q. And when was that?

A. It was just a short time ago in this particular instance, last fall, I believe.

Q. Is that a well that you were acting as a petroleum engineer on?

A. It was a well for abandonment.

Q. And you were acting as petroleum engineer on that well? A. Yes.

Q. Did you yourself personally buy this equipment from Mr. Rush? A. I did.

Q. You went down there yourself and picked it up? A. I talked to him on the phone.

Q. Do you have a foreman on the well or a drilling superintendent? A. Oh, yes, surely.

Q. Did he go down and pick out this particular equipment? [267] A. No.

Q. And what kind of equipment was it?

(Testimony of Graydon Oliver.)

A. It so happened it was some 10 and 3/4 inch pipe.

Q. Casing? A. Casing.

Q. And your superintendent advised you that you would need that much casing, or you wanted that much casing sent, and you arranged to have him buy it. Isn't that the fact?

A. No. I arranged to buy it myself in this particular instance.

Q. And that was about how long ago?

A. Oh, last fall some time.

Q. And you paid the O. P. A. ceiling price for it?

A. I don't recall the price I paid for it.

Q. Now, what other personal experience have you had in buying used oil well equipment?

A. Well, I have just bought here within the last few months probably some \$30,000 to \$40,000 worth of equipment.

Q. For whom?

A. The O. H. Drilling Company.

Q. That is for the purpose of drilling a well?

A. That is right.

Q. Drilling machinery?

A. No, casing, derricks, tubing, sucker rods, pumps, [268] tanks, production facilities, and pipe.

Q. Did you personally buy that equipment?

A. Most of it, yes.

Q. Who bought the rest of it?

A. I issued the orders for it.

Q. My question is did you buy it, not who issued

(Testimony of Graydon Oliver.)

the order for it. Did you go out and shop for it and buy it?

A. Your question is very technical, Mr. Dechter. If I issue an order for an item, I must buy it.

The Court: I don't think you two need argue. Just answer the question as well as you can and if you can't answer it, or don't understand it, just state to the court, Mr. Oliver.

The Witness: Why, yes, I bought it.

Q. By Mr. Dechter: From whom did you buy it?

A. Oh, from many concerns. From Superior Tank Company, Youngstown Steel Company, Howard Supply Company, Petroleum Equipment Company; in fact, they are too numerous to mention.

Q. Did you personally handle those purchases?

A. I did.

Q. You went down and picked the equipment out?

A. No, Mr. Dechter. I called on the telephone and told them what I wanted because I knew the equipment I wanted.

The Court: How long have you been doing that, Mr. [269] Oliver?

The Witness: Oh, for a long period of time.

The Court: Well, how many years would you say?

The Witness: It is hard for me to estimate.

The Court: What is it?

The Witness: It is hard to say. I don't recall.

(Testimony of Graydon Oliver.)

The Court: Well, three years, five years, or——

The Witness: Several years anyway.

The Court: Several years.

Q. By Mr. Dechter: In September of 1942 your business was that of a petroleum engineer, was it not?

A. It still is.

Q. And in September of 1942 and prior thereto had you personally abandoned any wells and sold the equipment therefrom?

A. No. I don't recall of having personally abandoned any wells because that is usually left to the lease superintendent to abandon.

Q. And prior to September of 1942, on how many occasions, over what period of time would you say you had to buy used oil well personal property and equipment?

A. Well, over a period of a great many years. From time to time I have bought considerable quantities of used oil well equipment.

Q. And that was bought in connection with wells that [270] you were acting on as engineer?

A. Yes.

Q. Was it part of your duties as engineer to purchase oil well equipment? A. Yes.

Q. Is that the usual duty of a petroleum engineer? A. No, not necessarily.

The Court: Well, you were also in the drilling business?

The Witness: I have been. I wasn't at that particular time.

(Testimony of Graydon Oliver.)

The Court: Had you been prior to that time?

The Witness: No.

Mr. Dechter: Your Honor, I feel that this witness is not qualified to testify as to values of used oil well equipment. Prior to 1942 his services were that of a petroleum engineer, and even if he had been operating it for himself, it would be that of occasionally buying some equipment, calling up and getting a price and buying it. I don't believe that qualifies a person as an expert.

The Court: I think the objection should be overruled. I believe the witness is qualified. You may answer. Do you have the question in mind?

The Witness: No, I do not, your Honor.

The Court: Read the question.

The Reporter: There is no question pending, your [271] Honor.

Mr. Weymann: I think if the reporter would read the last portion of Mr. Oliver's answer at the time the objection was interposed, we could get the continuity of it.

The Court: I think that would take too much time. If you have any further question, I think you had better ask it.

Q. By Mr. Weymann: Going for the moment to the overriding royalty, Mr. Oliver, will you tell the jury, please, how you arrived at the valuation of that?

A. The overriding royalty upon the Block No. 10 well, according to my records, amounts to a total of 13 1/3 per cent. The value was arrived

(Testimony of Graydon Oliver.)

at in a manner similar to that described for the 70 per cent working interest.

The future production of the well was forecasted year by year. The 13 $\frac{1}{3}$ per cent barrels were computed of the total forecast yearly production, and the value thereof established at the rate of 82.8 cents per barrel. Reading year by year, these values were as follows for the total 13 $\frac{1}{3}$ per cent interest: The first year, \$700.00; second year, \$640.00; third year, \$590.00; fourth year, \$530.00; fifth year, \$490.00; sixth year, \$440; seventh year, \$410.00; eighth year, \$400.00, making a total of \$4200.00.

From this was deducted the amount estimated for taxes which the interest owner must pay. In the first year it was [272] estimated at \$80.00; in the second year, \$70.00; in the third year, \$70.00; in the fourth year, \$60.00; in the fifth year, \$60.00; in the sixth year, \$50.00; in the seventh year, \$50.00; in the eighth year, \$50.00, making a total of \$490.00.

Deducting the taxes from the total value for the return of the oil then left the amount to be distributed to the owners of the 13 $\frac{1}{3}$ per cent interest as follows: First year, \$620.00; second year, \$570.00; third year, \$520.00; fourth year, \$470.00; fifth year, \$430.00; sixth year, \$390.00; seventh year, \$360.00; eighth year, \$350.00, a total of \$3,710.00.

These values were discounted in a like manner to present worth, giving a total present worth value for the 8 years of return of \$2,760.00.

(Testimony of Graydon Oliver.)

In this particular instance these interests are somewhat divided and distribution of the royalty is made by Title Insurance & Trust Company to which additional charges are made for the writing of those checks.

Mr. Dechter: We move to strike that last statement upon the ground that it is hearsay, incompetent, and not the best evidence.

Q. By Mr. Weymann: Mr. Oliver, do you know——

Mr. Dechter: I beg your pardon. I made an objection.

Mr. Weymann: I am sorry.

The Court: It may go out. [273]

The Witness: This \$2760.00 then is the number of dollars which invested at the present time in the 13 1/3 per cent interest of the Block No. 10 well as an overriding royalty would yield an estimated return of \$3710.00 over the period of years of anticipated production.

It is my opinion that a willing buyer would probably pay \$1750.00 for this interest, or an average of \$131.00 a royalty per cent.

Q. By Mr. Weymann: Mr. Oliver, you have referred to the method you have described in arriving at your valuation as an analytical engineering valuation. Do you know whether or not the method that you have pursued is a commonly accepted and used method of arriving at valuation of oil property in the industry.

Mr. Dechter: To which we object upon the

(Testimony of Graydon Oliver.)

ground that it calls for a conclusion of the witness, no proper foundation laid.

The Court: I think it would require some additional foundation.

Q. By Mr. Weymann: Mr. Oliver, are you familiar with the methods used by engineers in the valuation of oil properties? A. I am.

Q. How many valuations have you had occasion to examine?

A. You mean by other engineers or that I make of my own? [274]

Q. By other engineers?

A. I don't recall. I have examined many, but I can't give you any idea.

Q. Do you know whether or not the properties were bought and sold on the basis of those valuations?

Mr. Dechter: To which we object on the ground that no proper foundation has been laid.

The Court: It is overruled. You may answer it.

A. Yes, the property has been bought and sold upon the basis of an engineer's valuation.

Mr. Dechter: May I have the answer?

(The answer was read.)

Mr. Dechter: I move to strike out the answer on the ground it is not responsive.

The Court: The motion is denied.

Q. By Mr. Weymann: How many instances have come within your observation of that, Mr. Oliver?

(Testimony of Graydon Oliver.)

The Court: Read the question.

(The question was read.)

Mr. Dechter: I don't know what the question refers to, your Honor.

Mr. Weymann: Of the use of the analytical engineering estimate for purchase of property.

The Court: Proceed.

A. I make valuations of properties similar to the one [275] that I have just presented as a regular course of my business, and it is upon the basis of these valuations that properties are bought or sold or valued for tax purposes or for mergers, such as the valuation I made for the Richfield Oil Company and the Rio Grande Company in their merger.

The Court: Will you pardon the interruption? Mr. Weymann, you asked the witness if he was familiar with the common practice of engineers and he stated that he was. Now have you any question to be based on that?

Mr. Weymann: Yes.

Q. Is is the common practice of engineers to make valuations on the basis of which you made this valuation?

A. I believe it is an orthodox method of making a valuation, yes.

Mr. Dechter: We move to strike out the answer, your Honor, as not responsive to the question and being the opinion of the witness. In other words, I think what counsel has been driving at is to see whether there is a generally accepted practice. I have no objection to that being gone into to see if

(Testimony of Graydon Oliver.)

there is; but my idea is that each engineer does it his own way.

The Court: I think in substance he has answered that.

Mr. Weymann: I will ask the question.

Q. By Mr. Weymann: Is there a generally accepted practice of engineers in making valuations?

A. Well, that I can't answer.

The Court: Very well. That ends it, then. Have you anything further, Mr. Weymann?

Mr. Weymann: I have some exhibits that I want to introduce, if the court pleases. If Mr. Dechter will stipulate that I may introduce those photographs he may proceed with the cross examination.

Mr. Dechter: I will be glad to stipulate to anything that you show me that I feel is proper; but I don't know what you are referring to.

Mr. Weymann: I am closing my direct examination, and may I reopen my direct for the purpose of doing that?

The Court: It may be opened for that limited purpose.

Mr. Dechter: I have no objection.

Mr. Weymann: Yes.

The Court: It is almost time for our adjournment. The cross examination will be rather lengthy?

Mr. Dechter: Yes, it will.

The Court: Court will adjourn until tomorrow morning at 10:00 o'clock, and the members of the jury are admonished, as the court has heretofore admonished them at the previous recesses, that they

(Testimony of Graydon Oliver.)

are not to converse among themselves nor suffer themselves to be addressed by any person on any subject connected with the trial, and not to form or express any opinion thereon until the cause is finally submitted to them. [277] You are now excused until tomorrow at 10:00 o'clock.

(Whereupon, at 4:25 o'clock p.m., Thursday, July 26, 1945, an adjournment was taken until 10:00 o'clock a.m., Friday, July 27, 1945.) [278]

Los Angeles, California,

Friday, July 27, 1945. 10:00 a.m.

The Court: The members of the jury are all present. Is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated, your Honor.

Mr. Weymann: If the court please, in reading over the transcript last night, I noted that just before we took a recess Mr. Dechter examined Mr. Oliver on voir dire and we left a question hanging up in the air. I would like permission now to reopen my direct examination for the purpose of asking two questions.

The Court: I think that is the question where I asked you to reframe the question.

Mr. Weymann: The question is on the valuation of the physical equipment.

The Court: You may have that privilege.

GRAYDON OLIVER,

called as a witness by and in behalf of the Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

Q. By Mr. Weymann: Mr. Oliver, have you formed an opinion [280] as to the value of the physical equipment on the Block's Well No. 10 excluding that equipment which is part of the realty which is the casing in the hole, that is 5300 feet of 7-inch casing and 306 feet of 5 $\frac{3}{4}$ -inch liner?

Mr. Dechter: To which we will object on the ground that it is incompetent, irrelevant, immaterial, and no proper foundation laid to qualify the witness, and no proper foundation laid as to the date as of which that valuation is given.

Mr. Weymann: As of October 4, 1943.

The Court: The objection is overruled. You may answer.

The Witness: I made an estimate of the probable recovery or salvage value of the equipment—

The Court: Oh, no, Mr. Oliver. You are trying to tell too much in the answer. Read the question, please.

(Question read.)

The Witness: As of October 1943?

The Court: October 4, 1943. Just answer the question yes or no, have you formed an opinion?

The Witness: I could form an opinion, but I have not up to this moment.

(Testimony of Graydon Oliver.)

The Court: Well, was there any substantial difference between the valuation of such property on September 28, 1942, and October 4, 1943?

The Witness: The equipment was approximately one year older and depreciation for that one year must be taken into [281] consideration.

Mr. Dechter: We move to strike the answer as not responsive to the court's question.

The Court: Yes, it may go out.

Q. By Mr. Weymann: Was there any difference in the value of that equipment?

The Court: Any substantial difference in the valuation as of the two dates?

The Witness: No, I wouldn't say there was any substantial difference.

Q. By Mr. Weymann: Then, have you an opinion as to the value of that equipment referred to as of September 28, 1942? A. I do.

Q. And in your opinion the value as of October 1943 would be substantially the same?

A. It would. [282]

Q. And what, then, is your opinion of that value?

A. Considering that the equipment had to be used for an additional eight years for the production of oil——

The Court: Oh, no; please don't give that, Mr. Oliver. That may be brought out at a later time. This calls for an answer as to the amount in dollars. You give your answer in dollars as to what that opinion of value is.

(Testimony of Graydon Oliver.)

The Witness: I believe I have already given that value, your Honor, as \$2500.00; but that does not contemplate the recovery of that equipment until some eight years subsequent.

Mr. Dechter: We move to strike out the answer, your Honor. It is not responsive.

The Court: It may go out.

Q. By Mr. Weymann: What is its value, if you have an opinion as of October——

The Court: Mr. Weymann, I would suggest that Mr. Oliver be given time to consider this matter a little further. Apparently he is asked this question without his having considered that he might be asked to give such an opinion, and I think we will save considerable time if he is called at a later time.

Mr. Weymann: I do, your Honor, and may we have permission——

The Court: The Court will give you permission to ask the question at a later time.

Mr. Weymann: Thank you. [283]

The Court: It very frequently happens in such circumstances a witness is in a position where he has to give further consideration, and it becomes a matter of argument with him; he starts in to argue with counsel, and it is understandable.

Mr. Weymann: Very well. That is all for the present, then.

Go ahead, Mr. Dechter.

(Testimony of Graydon Oliver.)

Cross Examination

By Mr. Dechter:

Q. Mr. Oliver, in testifying as to your forecast of what the production will be in the future from this Block Well No. 10, you have employed a discount factor. Will you please explain to the court and jury what that discount factor is?

The Court: Read that question, please.

(The question was read.)

A. A discount factor is a factor applied to moneys to be received a number of years in the future, to reduce said moneys to the present worth value. In other words, if one dollar invested today at 7 per cent interest were allowed to continue with earnings at 7 per cent, accumulative at 6 months or 1-year period, at the end of the first year it would amount to \$1.07, at the second year an additional 7 per cent on the principal of \$1.07, and so forth, on until the end of the number of years. The discount factor is a reverse of that process. It considers what an amount of money set aside today at a certain interest rate would amount to, \$1.00 at a number of years hence.

Q. And what rate of interest did you use in making your calculation?

A. I believe it was 7 per cent; I am not quite sure.

Q. Well, will you please look at your report and see if it isn't a fact that you used 8 per cent? Call-

(Testimony of Graydon Oliver.)

ing your attention to the bottom of page 4—rather, 19.

A. That was the discount factor that applied only to the equipment and not to the reserve oil.

Q. All right. What discount factor did you use on the reserve oil?

A. I believe I said it was 7 per cent.

Q. Have you checked it now and is that still your testimony?

A. No, I haven't checked it.

Q. Well, please check it then. If you will turn to page 12, which is the 13 1/3 per cent operating interest, and the amount is smaller, you show a gross return to the owner for the year 1942 of \$620.00, do you not?

A. That is correct.

Q. And you show a present worth after the discount of \$570.00, do you not?

A. That is correct. [285]

Q. That makes a difference of \$50.00 discount. Is that correct?

A. That is correct.

Q. Eight per cent of \$620.00 would be \$49.60, would it not?

A. Undoubtedly it was an 8 per cent discount factor that I used.

Q. Are you sure about that?

A. No, I am not sure because I have not checked my tables.

Q. Please check them and see if I am in error that you used the 8 per cent factor?

A. (Consulting documents): I believe I used an

(Testimony of Graydon Oliver.)

8 per cent discount factor compounded annually instead of semi-annually.

Q. Very well. How long have you employed that discount factor in the making of an appraisal?

A. You mean a discount factor or an 8 per cent discount factor?

Q. How long have you used an 8 per cent discount factor in making valuations or appraisals?

A. Oh, a great number of years, or several years, two or three years, possibly.

Q. Well, don't you know whether you used it for two or three years, five years, ten years or twenty years? [286]

A. No, I can't say, Mr. Dechter, because I have used the discount factor in my valuations over a period of some 17 years, and the discount factor is more or less commensurate with the risk involved to the particular money in which you are investing. Your discount factor is picked out to suit the particular purpose and valuation.

Q. In other words, the discount factor is not used by you for the purpose of indicating what money is worth at the time of the making of the appraisal?

A. What money do you mean is worth? Do you mean bank interest, government interest, or real estate loans or——

Q. I am merely asking you to explain your answer, Mr. Oliver. You said that is what you consider a fair investment return would be. Is that what you said?

(Testimony of Graydon Oliver.)

A. That is correct, commensurate with the risk involved.

Q. All right. Now, have you used a higher return than 8 per cent? A. I have.

Q. When?

A. Not in this particular valuation, but in other valuations I have used a higher risk.

Q. On oil wells? A. On oil wells.

Q. And when did you use a higher valuation?

A. When the risk involved warranted such.

Q. Well, I am asking you now for the period. In other words, you say you have used an 8 per cent discount factor to your distinct memory at least three years, but you can't go back any farther than that. Now, I am asking you during what period of time did you ever use a discount factor greater or less than 8 per cent?

A. Well, that is a very difficult question to answer. I would have to dig out each valuation and find out the conditions of each valuation that I made.

Q. In other words, you figured this type of investment in this type of well deserved a return of 8 per cent? A. Yes, sir, that is correct.

Q. Compounded annually?

A. That is correct.

Q. Now, do you know where a person can invest his money at per cent at the present time in bonds or stocks of any kind?

Mr. Weymann: That question is objected to as entirely immaterial.

(Testimony of Graydon Oliver.)

The Court: I think the objection is good.

Q. By Mr. Dechter: Are you familiar with the fact that the banks are only paying an interest of about one per cent on deposits?

Mr. Weymann: Objected to as incompetent, irrelevant and [288] immaterial.

Mr. Dechter: I think this witness, your Honor, is an expert and he has taken a certain discount factor. We have a right to know whether he has taken into consideration the prevailing interest rates and things of that kind. In other words, what he has done in this case, he has not only taken—

The Court: That is a matter of argument, and I think the objection is good. It is not proper cross examination.

Mr. Dechter: Exception.

Q. By Mr. Dechter: Have you taken into consideration in fixing your valuation the fact that there is a great supply of money available for investment?

Mr. Weymann: That is objected to as entirely too indefinite. Supply of money available for what investment?

Mr. Dechter: Any investment.

Mr. Weymann: I still object to it.

The Court: I think that is assuming something not in evidence.

Mr. Dechter: I think it is something that can almost be taken judicial notice of.

The Court: Then, if it can, you don't have to ask the question.

(Testimony of Graydon Oliver.)

Mr. Dechter: Exception.

Q. If you had made a valuation on this particular well in the year 1941, would you have used the 8 per cent discount [289] factor?

A. I would have to have investigated the conditions surrounding the well at the time before choosing the proper discount factor to be used.

Q. Well, you have done that, haven't you?

A. Not in '41, but in '42.

Q. Well, you have taken the history of this well from the very time it was put on production, haven't you?

A. That is correct, but I based my position as of September 28, 1942.

Q. Mr. Block turned over to you all the information that you wanted as to the history of this well, did he not?

A. I believe that he did, or at least it came through your office.

Q. And what information do you lack that would enable you to answer whether you would have used a different discount factor in 1941 than you did in 1942?

A. Why, I would have to make a restudy of the problem as of that particular time. There is nothing that I lack at the present time except that it would necessitate a restudy on my part of the conditions surrounding the well in 1941.

Q. You would use the same information that was given to you, would you not?

A. Yes, that is correct.

(Testimony of Graydon Oliver.)

Q. In other words, you were also given access to the [290] records of the Division of Oil and Gas which would not have been available to you without the consent of Mr. Block. Is that correct?

Mr. Weymann: That is objected to as being entirely argumentative, if the court please, and being improper cross examination.

The Court: Read the question, please.

(Question read.) [291]

The Court: It is overruled. You may answer it.

A. I had access to the records of the Division of Oil and Gas. I believe that permission was obtained for me by the Department of Justice. I don't know whether it came from Mr. Block's or not.

Q. By Mr. Dechter: If you had made a valuation of this well in 1937, what discount factor would you have used?

Mr. Weymann: Objected to as speculative.

The Court: It is overruled.

Mr. Weymann: Exception.

A. I would have made a study of the conditions of the well as of any effective date in 1937 and used an appropriate discount factor the same way in which I made a study of the conditions of the well on September 28, 1942, and used a discount factor which I considered appropriate.

Q. By Mr. Dechter: Now, will you please, again, explain to the court and jury what you mean when you say you used a discount factor that was appropriate?

(Testimony of Graydon Oliver.)

A. I believe that I have answered that question for you in previous testimony.

Q. If you don't mind I wish you would state it again.

A. Future earnings were discounted to present worth by an appropriate discount factor. This discount factor was selected as being commensurate with interest rates that might be applied to an investment of like risks and conditions. [292]

Q. Well, then, taking into consideration that interest rate, did you consider what the prevailing interest rate in the community was?

A. I undoubtedly did take into consideration interest rates in general, but more particularly interest rates as they apply to the oil industry and to the hazards involved in a producing well.

Q. You did not take into consideration, then, the rate of interest that the average investor would receive if he invested his money at the same time?

A. For a like type of investment, yes; an unlike type of investment, no. I cannot consider an investment in a hazardous operation such as the producing of an oil well commensurate with an investment in a government bond.

Q. Are you familiar with the fact that the Bank of America has been making drilling loans for the drilling of wells at a rate of interest of 3 per cent per annum?

A. No, I am not familiar with that.

Q. And are you familiar with the fact that they

(Testimony of Graydon Oliver.)

are merely looking to the production of the well for the return of their money?

Mr. Weymann: That question, again, is objected to. It is assuming a fact not in evidence.

Mr. Dechter: It is testing the knowledge of the witness, your Honor. [293]

Mr. Weymann: There is no evidence here that they are making such loans.

The Court: Will you gentlemen approach the bench here?

(Discussion at bench off the record.)

The Court: Read the question, Mr. Goldstein.

(Question read.)

The Court: Mr. Dechter, I think the form of that question is objectionable. It is assuming something not in evidence, and I think that you may reframe that question to avoid that defect.

Q. By Mr. Dechter: Are you familiar with the fact——

The Court: No, I wouldn't start out with "Are you familiar with the fact." I think that would be assuming something not in evidence. I think you might ask the witness whether he knows such-and-such a thing is a fact.

Q. By Mr. Dechter: Are you familiar with a tideland permit that was granted about two years ago to Mr. F. A. Fairfield, Mr. Sherman, O. C. Field, which involved the drilling of semi-proven and unproven locations where a corporation was organized and the Bank of America made a loan to that corporation without any personal guarantee of

(Testimony of Graydon Oliver.)

the individuals and looking merely to the production of the well for the return of its loan?

The Witness: Kindly read the question, please.

(The question was read.) [294]

A. The question is very ambiguous, Mr. Dechter. I don't know where the tideland permit is. It could be in Huntington Beach. It could be in Golita——

Q. By Mr. Dechter: In Huntington Beach.

A. No, I am not familiar with it.

Q. In addition, Mr. Oliver, to using the discount factor of 8 per cent compounded annually for the purpose of arriving at a fair return on an investment, you arbitrarily after taking that discount took off a lump sum off the present worth after using that discount factor, did you not?

A. Well, it wasn't arbitrary at all.

Q. Well, you took off an additional sum of money, a lump sum of money?

A. No, I didn't take off an additional lump sum.

Q. Let's be concrete, then, and look at your estimate of reserves on the 13 1/3 per cent gross royalty interest. You show, according to your estimates or forecasts, that the gross return for the 8-year period would be \$3710.00, is that right?

The Court: What page is that on, Mr. Dechter?

Mr. Dechter: Page 12, your Honor.

A. That is correct.

Q. By Mr. Dechter: And after applying the discount of 8 per cent compounded annually you showed a present worth of that return to be \$2760.00, is that correct? [295]

A. That is correct.

(Testimony of Graydon Oliver.)

Q. And then on top of that you took off approximately \$1010.00 to arrive at what you consider a fair market value of \$1750.00?

A. I arrived at a fair market value——

Q. Did you take off that amount of money to arrive at your opinion of the fair market value?

A. In effect I did, but actually the method was to take a percentage which, to be exact, was 63.35 per cent of the present worth value, which according to my experience has been the amount that the purchasers are willing to pay for a property for purchase based upon the engineer's present worth value.

Mr. Dechter: Your Honor, we move to strike out the latter portion of that statement as not responsive and argumentative and self-serving.

The Court: The motion is denied. [296]

Q. By Mr. Dechter: In arriving at your valuation, did you take into consideration at all the fact that the production of the well might have been increased during the period?

Mr. Weymann: That is objected to as being too indefinite. During what period?

Mr. Dechter: The period of the forecast of 8 years.

The Court: You may answer.

The Witness: I took into consideration the probability of an increase in production that might have been occasioned by additional deeper drilling or other sands in the structure and the probability that such would not be the case, and the probability

(Testimony of Graydon Oliver.)

of the continuance of the production according to the pattern as the well itself drew in the previous years.

Q. By Mr. Dechter: Are there such methods generally known in the oil industry which when used increase the production of a well from its present zone, eliminating any such deeper zone, that are generally used in the oil industry?

A. There are production techniques that will oftentimes increase well productions, and that was given consideration in this particular well, but the fact that we had some three years prior production records in which undoubtedly a good operator such as Mr. Block would have used, I believe that the records of the well itself reveal that the maximum production was being obtained from the sand. [297]

Q. What are those methods generally employed to increase the production from a well without deepening the well?

A. There are many methods used, depending upon the location of the well, the field in which the well is situated, and depending upon the conditions which the operator considers are reducing the production of that well. For instance, the perforations in the liners may be plugged up, so that can be remedied mechanically. He can either wash out those perforations or make new perforations. There may be a wax problem. There may be an asphaltene problem. There may be a mud problem. He can wash the formations with a mud acid and attempt to clean out the mud. He can wash the pipe

(Testimony of Graydon Oliver.)

with a solvent and attempt to clean out the waxes and asphaltenes.

In fact, it is a particular problem for a particular well, depending upon a situation.

Q. Is there a method known as a gas compressor or a vacuum compressor method for the purpose of increasing production from a well from its present zone? A. Not that I know of, no.

Q. Well, don't you know, Mr. Oliver, that such compressors have been used in Southern California?

A. Not to increase production of wells particularly.

Q. Well, referring to this very same well, don't you know that with the use of a vacuum compressor there was at least ten barrels of oil additional secured each day? [298]

A. I believe that the well was using a compressor at the time it was taken over by the Government on September 28th.

Q. Don't you know, Mr. Oliver, at the time the Government took that well over that that compressor was disconnected and had not been used, and that that is one of the surplus items that the Government returned?

A. I believe that is carried in the inventory, is it not, as part of the property the Government took over?

Q. You are apparently mistaken, Mr. Oliver. If you will consult the inventory, you will find that compressor was returned as surplus and was not hooked up.

(Testimony of Graydon Oliver.)

The Court: Could you save time by helping out on that?

Mr. Dechter: Will you stipulate to that, Mr. Weymann, that the compressor was returned?

The Court: Pardon me, wait just a minute. Would you save time by helping out on that question of fact, or do you know?

Mr. Weymann: I don't know, your Honor.

The Witness: According to the inventory I have, the property taken over was on the well and is shown in my report on page 25.

Q. By Mr. Dechter: Did you examine the well at or about the time the well was taken over?

A. Yes, I examined the well, but not in detail, on or about the time the well was taken over. I examined it in [299] detail about one year later.

Q. And at that time was the compressor connected up at the well and being used?

A. I believe that it was. I don't recall definitely.

Q. That is your best recollection, is it?

A. At the time the well was taken over on September 28th, the inventory included one 16-inch Gaso Pump & Burner Company Vacuum Compressor cylinder operated by a walking beam.

Q. Do you know of your own knowledge, Mr. Oliver, that that well was connected up on the compressor?

A. This was the compressor that was attached to the walking beam.

Q. Will you answer the question yes or no, and then you can explain all you want to?

(Testimony of Graydon Oliver.)

A. I don't know of my own knowledge. I merely assume.

Q. You are guessing at it, is that true?

A. No. I have a record of what was in the well at the time it was taken over.

Q. But you don't have a record that it was being used at that time, do you?

A. No, I have no record.

Q. Now, in arriving at your valuation, did you take into consideration the fact that the production of this well might have been increased by using these methods that you spoke of, to-wit, washing and cleaning out the well, acidizing the well, using a vacuum compressor? [300]

A. Yes, I did.

Q. And from your examination of your records, can you tell us when was the last time this well was ever cleaned out prior to the Defense Plant Corporation taking it over?

A. Well, I do not have those records with me.

Q. As a matter of fact, you know that the well had not been cleaned out or reconditioned for quite some time, do you not?

A. I don't recall, Mr. Dechter, because I do not have the records with me on that.

Q. And if the well had not been cleaned out or reconditioned for a period of two years, in your opinion would you say that there would be a probability of the production being increased by the well being cleaned out and reconditioned?

A. There was a possibility and a probability that a slight increase in production might have been

(Testimony of Graydon Oliver.)

obtained had the well been cleaned out a short time before the date of September 28, 1942.

Q. Now, in arriving at your valuation, did you take into consideration the fact that the price of oil might increase above 80 cents a barrel?

A. No, no consideration was given to an increase in the price of oil above 80 cents a barrel.

Q. You made your valuation when, Mr. Oliver?

A. 1943, I believe it was, or 1944. [301]

Q. This report, this letter is dated July 23, 1945. Had you made an earlier report than that?

A. That is correct.

Q. Do you have that here?

A. I have the figures of it here.

Q. May I see them?

A. Yes (handing document).

Q. Did you make any other report to the United States Attorney's office or to the Defense Plant Corporation other than this letter report dated July 23, 1945?

A. Yes. I have made other reports.

Q. Do you have a copy of those?

A. No, I do not.

Q. Where are they?

A. They are in my office. I have a number of reports.

Q. They are available, are they?

A. Yes, they are available.

Q. Your secretary is here? A. No.

Q. Would it be possible for you to get those before the day is out?

(Testimony of Graydon Oliver.)

A. Well, what specifically would you want? I made reports on practically every property in the——

Q. I am only interested in this property.

A. Well, no, I have made no other reports—yes, I [302] have made another report on May 31, 1944, covering the physical equipment, and I believe I have another report covering the oil reserves.

Q. May I have an opportunity of looking at those, Mr. Oliver?

A. I will have to get the oil reserves with the consent of Mr. Weymann.

Mr. Dechter: Any objection, Mr. Weymann, to my seeing those?

Mr. Weymann: May I see that? No, there is no objection to that. It may be offered in evidence.

Q. By Mr. Dechter: Now, at the time you made this letter report of July 23, 1945, and at the time you made the letter report of May 31, 1944, which is the copy you have just handed me to peruse with the permission of Mr. Weymann, you knew on those dates that the price of oil was 94 cents a barrel for the oil from this well, did you not?

A. I probably did. I probably did not pay any attention to it. That was a subsidy granted by the United States Government. The price of oil in the Playa del Rey field was frozen on May 23, 1941.

Mr. Dechter: I move to strike that answer, your Honor as a conclusion of the witness, and that is absolutely beyond the fact.

The Court: I think it is a proper explanation

(Testimony of Graydon Oliver.)

of his [303] answer. He said no and then gave his explanation.

Q. By Mr. Dechter: Mr. Oliver, how long has there been a general discussion in the community about the fact that the price of oil is too low and inadequate for the oil production in this part of the country?

A. Probably ten years.

Q. And it is a fact, is it not, that it is the general consensus of opinion of the oil operators that the price of oil ought to be higher than it is at the present time if it was not for Government regulations?

A. I believe that is correct. [304]

Q. It is a fact, is it not, that in the last war the price of oil went to above \$2.00 a barrel, after the last war?

A. Over three dollars and a half a barrel.

Q. And isn't it a fact that the numerous writings by numerous experts writing in trade and financial magazines have predicted that the price of oil after the government regulations are lifted will go to \$4.00?

A. I believe that there have been predictions, I don't know the price; but such writers I don't think are adequately advised of the entire oil situation.

Mr. Dechter: We move to strike out the latter part of the answer as not responsive. I merely asked him if there were such articles.

The Court: The last part may go out.

Q. By Mr. Dechter: Isn't it a fact, Mr. Oliver, that in the last two or three years, in order to meet

(Testimony of Graydon Oliver.)

the shortage of oil, the government at its own expense has been paying the cost of transporting oil from Texas to Southern California to be refined here for the purpose of meeting the demand.

Mr. Weymann: I think that is entirely too remote and without the scope of the cross examination, if the court please. We may go on here indefinitely. I think that is entirely too remote. I realize latitude is permitted in cross examination, but that is rather too remote.

Mr. Dechter: I don't see how it is remote, your Honor. [305] It is a present condition that existed at the time that this well was taken over, before and after, and buyers buying these types of interest would take that into consideration just like a man buying wheat in July for delivery in December would pay a certain price hoping that by reason of conditions the price would be higher in December.

The Court: The objection is sustained.

Q. By Mr. Dechter: I will ask you, Mr. Oliver, if it isn't a fact that there have been hearings in Congress concerning the importation of oil from abroad to meet the shortage of oil in this country.

The Court: Can you answer it, Mr. Oliver?

A. Yes, I believe there have.

Q. By Mr. Dechter: And I will ask you if it isn't generally predicted by oil men that it will be necessary to import oil after this war to meet the demand for oil and its by-products.

Mr. Weymann: If the court please, I think under the authorities that all of this examination

(Testimony of Graydon Oliver.)

with respect to the condition or to the general impression of the public or the industry should be confined to the period preceding the taking of this property.

The Court: Well, Mr. Weymann, I think what Mr. Dechter has in mind, it seems to the court, is proper to ascertain what Mr. Oliver, who is an expert, considered in fixing the [306] valuation for the coming eight years, that is, eight years after 1942. I think that is what you had in mind, isn't it?

Mr. Dechter: That is correct, your Honor.

The Court: I think considerable latitude should be allowed on that point, although the court is just about to limit the cross examination on that matter. I think you proceeded quite extensively with it, Mr. Dechter. However, this question may be answered.

Mr. Weymann: May this line of questioning, then, be limited merely for the purpose of testing the expert's knowledge?

The Court: That is the only purpose, so the court considers it, and it is limited to that.

Mr. Weymann: Not for the purpose of establishing market value?

The Court: Well, it couldn't be for the purpose of establishing market value, and the jury are instructed it is not to be received for that purpose, but only testing the knowledge of the witness in making the statements which he has made here as an expert.

You agree with the court in that, do you, Mr. Dechter?

Mr. Dechter: Yes, your Honor. In other words,

(Testimony of Graydon Oliver.)

it is for the purpose of seeing whether the expert has taken into consideration all of the other elements.

The Court: For the purpose of testing the scope of his knowledge? [307]

Mr. Dechter: That's right.

The Court: Read the question, please.

(The question was read.)

The Witness: May I answer that in my own way, your Honor?

The Court: Answer it yes or no, and then you may explain it.

A. The answer is no, generally. There have been some predictions made by some parties to that effect. However, I am fully cognizant of the oil situation in the State of California and the production from the State of California. I have had the occasion to investigate productions and the price schedules over a period of years commencing from 1937 or '38 until 1942 or '43, and during that period of time we found cycles of high prices and cycles of low prices. For instance, 27 gravity oil sold as low as 35 cents a barrel and as high as \$1.20 a barrel.

Mr. Dechter: Your Honor, may I interrupt the witness to make a motion to strike on the ground that it isn't responsive to the question? I don't mind an explanation on his answer to the question, but I think this is going quite afield and more or less is an argument on the general issue.

The Court: Well, I think that it would be

(Testimony of Graydon Oliver.)

proper if he made the statement generally as to what oil men know and what they predict, or what they have known; but he is giving his [308] own experience now.

Mr. Dechter: I move to strike that out.

The Court: That particular part may go out.

Mr. Dechter: Thank you.

A. (Continuing): The State of California is capable of producing approximately 900,000 barrels of crude oil daily, and the normal pre-war demand did not exceed 600,000 barrels daily, leaving a surplus, according to today's figures, of approximately 300,000 barrels daily, which means that after the war demand has ceased there will be a surplus of probably that amount, and that again depends upon industry, because since the war we have developed a great many gas fields in Northern California with tremendous reserves which have been estimated are sufficient to supply the gas requirements of the state——

Mr. Dechter: Your Honor, I am going to interrupt again.

The Court: Don't interrupt. Let him finish and then you may move to strike it.

A. (Continuing): ——for a great number of years; and this gas would, in turn, decrease the requirements of oil to be used as fuel oil.

The Court: I think there should be a limitation to your explanation.

Mr. Dechter: I move to strike out the entire

(Testimony of Graydon Oliver.)

answer. It is not an answer to the question as to what the general [309] consensus of oil men is.

The Court: I think that this question is so general in its scope that the answer may stand. The motion is denied. Any further cross examination?

Mr. Dechter: Yes, your Honor.

The Court: The court will limit the cross examination upon that point, Mr. Dechter.

Mr. Dechter: May I ask one question on what the witness has voluntarily testified to? In other words, the demand of 600,000 barrels before the war.

The Court: You may, yes.

Q. By Mr. Dechter: Are you assuming, Mr. Oliver, that the demand which was 600,000 barrels before the war will be the same after the war?

A. I am assuming it will be somewhat similar, yes.

Q. So you have given no consideration to the fact that the population of California has increased, industry has increased, the Navy has increased and its main bases are on the Pacific Coast?

A. I have given consideration to those factors, but I have also given consideration to the factors of the tremendous gas reserves that have been developed in the interim period which will offset, to a large extent, the probable increase in demand of fuel oil.

Q. What did it cost to drill this well, Mr. Oliver, do [310] you know, at the time the well was drilled?

A. I have no idea. I could make an estimate.

(Testimony of Graydon Oliver.)

Q. It was in the neighborhood of \$60,000.00, was it not? A. I would imagine so, yes.

Q. And that was in 1935?

A. That is correct.

Q. And what would it have cost to drill this well in September of 1942?

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and having no bearing on the issues of value.

Mr. Dechter: It is testing this witness, your Honor, as an expert, testing the value of his opinion to show what this improvement would have cost in September of '42 in relation to what it did cost in '35.

The Court: The objection is sustained.

Q. By Mr. Dechter: Isn't it a fact, Mr. Oliver, that the cost of drilling in the year 1942 was at least 50 per cent higher than in the year 1935?

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and having no bearing on the issues in this case.

The Court: I don't think it tests the witness' knowledge as to matters that are material in this case. The objection is sustained.

Q. By Mr. Dechter: Mr. Oliver, I will ask you to look at your decline curve chart and I will ask you if it isn't a [311] fact——

The Court: That is Plaintiff's Exhibit 9.

Mr. Dechter: Thank you, your Honor.

The Court: I think you can find a pointer there somewhere, Mr. Dechter.

(Testimony of Graydon Oliver.)

Q. By Mr. Dechter: I will ask you if it isn't a fact that since about the beginning of the year 1940 the well had reached a period of what is known in oil parlance as settled production?

A. That is correct.

Q. In other words, in the average well during the early life of the well you have what is known as a flush production period, is that correct?

A. That is correct.

Q. And after that flush production is secured there is a very substantial decline in the production of the well?

A. There is a pronounced decline, depending upon the well characteristics.

Q. That pronounced decline usually takes place within the first two or three years of the life of a well, does it not?

A. It may take place within the first two or three years. In the particular well it took some three or four years.

Q. After that period the decline becomes gradual until [312] it almost reaches a parallel line?

A. No, it never reaches a parallel line; it is always a decline.

Q. Well, isn't it a fact that since about September, 1939, the production has run about the same that it ran in 1942?

A. I wouldn't say that at all, no.

Q. Well, looking at your curve, doesn't that so indicate, starting with the year 1940?

A. No. If you take the average of the decline

(Testimony of Graydon Oliver.)

and draw a line through those averages (indicating)——

Q. Why not start it right here (indicating)? It is January 1940, that is what I am talking about, January, 1940.

A. It is rather difficult to take a piece of a well record and put it together with the entire well.

Q. In other words, I am starting with the well in 1940, the beginning of the year 1940. Just point where that begins.

A. The year 1940, the well productions were low for probably some particular reason.

Q. Well just draw a line and show us where there has been a decided curve from the year 1940 to——

A. Yes, I would call it a decided curve, a curve sloping downwards towards the right.

Q. Will you point your ruler to end, say, at July of [313] 1942, and tell the court and jury if there was any perceptible decline during the period between January, 1940, and July, 1942?

A. Well, productions in July, 1942 were a little bit higher than the well production in January of 1940, but they were also considerably lower than they were in March of 1941.

Q. And in March of 1941 they were considerably higher than in January of 1940?

A. That is correct. Those are monthly fluctuations in well production due to mechanical problems of the well itself.

Q. In other words, in August or September of

(Testimony of Graydon Oliver.)

1942 the decline in production might have been due to some mechanical difficulty in the well?

A. It might have been.

Q. Now, I will ask you if it isn't a fact that in the year 1942, and particularly about September of 1942, if a well was down it was sometimes necessary for the well to remain down longer than usual because of the difficulty of getting supplies and replacements and pulling equipment?

A. I believe that could be stated as correct, yes.

Q. And that was due to the great demand for equipment that arose since the war started?

A. I don't believe it is primarily due to equipment as it was due to labor. [314]

Q. And isn't it a fact that it was also due to the great demand for drilling equipment and machinery in drilling wildcat wells?

A. Mr. Dechter, I don't think there was any great demand in 1942. The demand came subsequent to 1942.

Q. At any rate, in the last few years there has been a great attempt to discover new production; isn't that right, Mr. Oliver?

A. Yes, there have been extended attempts to discover new production in all areas of the State of California, particularly since 1944.

The Court: I think the court will take a recess at this time. The jury will bear in mind the admonitions of the court heretofore given and return when called by the bailiff.

(A recess was taken.) [315]

(Testimony of Graydon Oliver.)

The Court: The jurors are all present. Is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

Q. By Mr. Dechter: Mr. Oliver, the Union Oil Company posts what is known as a market price for the Playa del Rey field?

A. Yes, I believe they do.

Q. And isn't it a fact that the posted market price for that field is 94 cents a barrel?

Mr. Weymann: As of what date, Mr. Dechter?

Mr. Dechter: At the present time.

Mr. Weymann: That is objected to as being incompetent, irrelevant, and immaterial, and having no bearing on the value of this property taken as of September 28, 1942.

Mr. Dechter: It is preliminary.

The Court: I think if it is preliminary as to testing the basis of the estimate of the expert and his knowledge——

Mr. Weymann: It is objected to on the further ground that it is based on knowledge acquired subsequent to the date of the acquisition.

The Court: Well, it is substantially the same question involved in the offer, and there is this difference. This is asked definitely for the purpose of testing the knowledge of the witness and upon what he based his estimate. The other [316] is an independent offer. This might be admissible when the other might not be admissible.

Mr. Weymann: Well, it is objected to on the

(Testimony of Graydon Oliver.)

further ground that it is not taking into consideration in arriving at his estimate of future production or of the future value as of September 28, 1942. That is, the knowledge that he acquired subsequently was not available to him or anyone else or any prospective purchaser or the seller on the date the property was taken.

Mr. Dechter: Valuation, your Honor, was made in June of 1945 by this witness and he tried to place a fair market valuation as of September 1942. We have a right to show what elements he considered when he sat down in June of 1945 to arrive at this opinion on what the value was in September of 1942. This is preliminary and I intend to tie it back as to when this posted market price went into effect.

The Court: Well, the court understands the basis of your offer, but still there is a question of great importance——

Mr. Weymann: It goes to the whole question of the elements to be considered in making a valuation.

The Court: It seems to the court that——

Mr. Dechter: Maybe I can get it by reframing the question, your Honor.

The Court: Well, what I was going to say, as I recall it this evidence is already presented in the case, and so there [317] will be no material injury or harm from now bringing it to the attention of the court.

(Testimony of Graydon Oliver.)

Mr. Weymann: I think it was admitted, so far as it was in, subject to objection.

Mr. Dechter: You objected and the court overruled the objection.

The Court: Will you gentlemen approach the bench?

(Thereupon, counsel approached the bench, and a discussion was had out of the hearing of the jury and off the record.)

Mr. Dechter: May I have the question read, Miss Reporter?

(Question read.)

Mr. Dechter: 19 gravity oil as produced from Block's Well No. 10.

The Witness: Well——

The Court: Are you going into it for the purpose agreed upon?

Mr. Dechter: Yes, your Honor. This question is for the purpose of testing the witness' knowledge as an expert.

The Court: And for no other purpose?

Mr. Dechter: For that limited purpose.

The Court: Very well. With that limitation, it may be received.

Mr. Weymann: May the jury be instructed to disregard it for any other purpose? [318]

The Court: The jury are so instructed. This is received for the limited purpose of testing the knowledge of the Government's expert, Mr. Oliver. Now, you may answer the question, Mr. Oliver.

(Testimony of Graydon Oliver.)

The Witness: I have no knowledge of the posted market price for Playa del Rey crude oil as of the present time, as I have had no occasion to refer to that posted market price. The price that I used in my valuation was 80 cents a barrel, which was slightly higher than the posted market price effective as of September 28, 1942.

Mr. Dechter: I move to strike out——

The Court: I think that has been explained, that the posted price was 77 cents per barrel, but due to the fact that Mr. Block was selling it specially he was receiving the higher price, which was 80 cents, and that you fixed your valuation on that basis.

The Witness: That is correct, your Honor. I have a copy here of the posted market prices.

The Court: Never mind. You don't need to go any further, Mr. Oliver, on that point.

Q. By Mr. Dechter: Mr. Oliver, you made your appraisal in June 1935?

The Court: 1945.

Mr. Dechter: 1945. Thank you, your Honor.

Q. Mr. Oliver, you made your appraisal in June of 1945 [319] of Block's well No. 10, and at that time did you not know that the posted market price for oil of 19 gravity in the Playa Del Rey field was 94 cents a barrel?

A. Well, Mr. Dechter, in the valuation——

Q. Just answer yes or no.

The Court: Just answer the question yes or no. Did you know that or not?

(Testimony of Graydon Oliver.)

The Witness: I probably did subconsciously.

Q. By Mr. Dechter: Isn't it a fact that you knew that commencing in the spring of 1943 the posted market price of 19 gravity oil in the Playa del Rey field was 94 cents a barrel?

A. I believe you are misconstruing it slightly. The posted market price for Playa del Rey crude I don't believe has been changed, but there has been a subsidy added to the posted market price.

Mr. Dechter: We move to strike the answer of the witness, your Honor, on the ground that it is a conclusion. If there is a subsidy, it would be based upon some Governmental regulation or law, and we defy the Government to produce such law or regulation.

The Court: Let me hear the question and answer.

(Record read.)

The Court: Your motion is denied.

Q. By Mr. Dechter: Are you familiar with the fact [320] that since about the year 1942 there has been an O. P. A. ceiling price on crude oil as well as on other commodities?

A. Yes. There is an O. P. A. ceiling price on crude oil effective May 23, 1941.

The Court: Now, Mr. Dechter, to serve the purpose of this examination and within the limitation, I think that question should have been as of June 1945, the date that he made his estimate, and if there are any others along that line, I think that should be so designated and limited.

(Testimony of Graydon Oliver.)

Mr. Dechter: Very well.

Q. Now, isn't it a fact, did you or did you not know in June of 1945 when you made this valuation that there was an O. P. A. ceiling price on 19 gravity oil in the Playa del Rey field of 94 cents a barrel?

A. Well, in the first place, I did not make the valuation in June of 1945. I made it some time in 1943 or 1944.

Mr. Dechter: Your Honor, may I ask that this witness be instructed to answer the question and not argue the answer, and that if he wants to explain it, he can then do so?

The Court: Well, now, let me hear the question?
(Question read.)

The Court: I think the witness is in his province, Mr. Dechter, of correcting a mistake which in his mind is a mistake. It is assuming something, according to him, which is not a fact. [321]

Mr. Dechter: I was really trying to follow the court's suggestion.

The Court: I thought he said 1945, but I may have been mistaken just as you were.

Mr. Dechter: Yes.

Q. Now, Mr. Oliver, just to get the record straight, when did you form your opinion as to the value of the Block Well No. 10?

A. About the spring of 1944, I believe.

The Court: I want to say that the court was under a misapprehension as to his testimony. I thought he said in 1945.

(Testimony of Graydon Oliver.)

The Witness: December 6, 1943.

Mr. Weymann: The written report was dated in 1945, but the valuation——

Mr. Dechter: July 23, 1945 was the date of the written report.

Mr. Weymann: Of the report, not of the valuation.

The Court: As I now understand it, Mr. Oliver formed his opinion in the spring of 1944. but that he did not make the report to which reference has been made until some time in June, 1945. [322]

Q. By Mr. Dechter: Now, you testified, Mr. Oliver, that the O. P. A. has placed a ceiling price on crude oil, is that correct?

A. Effective May 23, 1941, I believe.

Q. And do you know what that ceiling price was for 19 gravity oil in the spring of 1943?

A. I took no consideration to the value in 1943; I took it as of the effective date September 28, 1942.

Q. Prior to September of 1942 had you ever bought or sold any wells in the del Rey field?

A. No.

Q. Prior to September, 1942 and going back for a period of five years back to September, 1942, had you bought or sold any wells? A. No.

Q. Since September of 1942 have you bought or sold any oil wells? A. No.

Q. On September, 1942 had you ever made any valuation or appraisal of any well in the del Rey field? A. On September, 1942?

Q. Yes. A. No.

(Testimony of Graydon Oliver.)

Q. This appraisal that you have made for the Government in the spring of 1944 and which is contained in this written [323] report dated July 23, 1945, is that the first engineering appraisal that you have made of any well in the del Rey field?

A. That I cannot recall. I can't answer that question without referring to my record.

Q. You have no recollection of doing any work for any one else besides the government on any property in the del Rey field?

A. It seems to me I did some work for Ed McAdams in that field, but I would have to refer to my records to make sure.

Q. You have no recollection at this time?

A. Not at this moment, because, after all, I run several hundred valuations a year through my office.

Q. When was the first time you ever made any engineering valuation?

A. Oh, probably as early as 1928 or '29.

Q. And in what fields did you make such valuation?

A. I don't recall. I made a valuation of the properties of the Italo Petroleum.

Q. Italo Petroleum Company in what field?

A. Well, they have properties in many fields. I don't recall the field exactly.

Q. Did you ever do any work for them on their lease at Signal Hill? A. Yes. [324]

Q. Are you familiar with the sublease from the

(Testimony of Graydon Oliver.)

Italo Petroleum Company to the Big Four Oil Company?

A. I probably was at the time I made the valuation. I don't recall.

Q. When did you make that valuation?

A. I believe that was about 1928 or '29.

Q. Do you know of your own knowledge that the Big Four Oil Company have four wells that are approximately 7 years old; that the production hasn't varied for the last two or three years?

A. I have no knowledge now of the production records of that well. I will have to take your say-so.

Q. You are familiar with the fact that in Signal Hill most of the wells make a lot of water, are you not?

A. I believe that many of them do.

Q. And some of those wells have been making as much as 80 or 90 per cent water for a period of about 10 years?

Mr. Weymann: Pardon me a moment. I was under the impression that the court limited the scope of cross examination for the purpose of testing this witness' knowledge.

The Court: No; that was as to a particular phase.

Mr. Dechter: Read the question, Mr. Reporter.

(The question was read.)

A. I believe that that statement is fairly correct. I am not sure about it. I know that they have a habit of [325] producing one sand until it is depleted and it probably makes 80 or 90 per cent

(Testimony of Graydon Oliver.)

water, and then they take another sand and produce that for another period of time. So I would have to know the exact conditions surrounding the particular well before I could answer that question truthfully.

Q. It is a fact, is it not, that the mere fact that a well is making a lot of water does not preclude the fact that it may be a profitable producer?

A. I think generally that is a very true statement.

Mr. Dechter: May I have the answer, please? I didn't hear it.

(The answer was read.)

Q. By Mr. Dechter: I will show you, Mr. Oliver, a statement of oil, gas and natural gasoline produced from the Defense Plant Corporation Well No. 10 at Playa del Rey, formerly Block Oil Company No. 10, being Defendant's Exhibit No. A, for identification, and I will ask you if you took into consideration the fact that said well since it was taken over by the government has in the period from September 29, 1942 to June, 1945 produced approximately \$23,500.00.

The Court: Mr. Dechter—

Mr. Weymann: I assign that as misconduct of counsel. Counsel has stipulated and agreed with the court that this would be withheld until the court rules on it.

Mr. Dechter: I take exception to that. I made no [326] stipulation or exception.

Mr. Weymann: The court withheld its ruling.

(Testimony of Graydon Oliver.)

The Court: In any event, I think it is improper to ask a question concerning an exhibit which has only been marked for identification, Mr. Dechter.

Mr. Weymann: May the jury be instructed to disregard both the question and the exhibit?

Mr. Dechter: At this time, your Honor, I wish to renew my offer.

The Court: Let the court rule upon the request, Mr. Dechter.

The jury are ordered to disregard the question and to draw no inference whatsoever from the asking of it.

Now you may proceed.

Mr. Dechter: At this time I wish to renew my offer in evidence of Defendant's Exhibit A heretofore marked for identification.

Mr. Weymann: Objected to as incompetent, irrelevant and immaterial, and having no bearing whatsoever on the value of this property as of September 28, 1942.

The Court: I think that the objection is good. And it is not proper cross examination of this witness' testimony.

Mr. Dechter: Your Honor indicated that his previous ruling was merely an interim ruling.

The Court: That is true, and you have the right to offer [327] it.

Mr. Dechter: I at this time would like to renew my offer, so I may have an opportunity of using it if it is received.

The Court: The objection is sustained.

Mr. Dechter: Note an exception.

(Testimony of Graydon Oliver.)

Q. By Mr. Dechter: Did you take into consideration in making your valuation and in giving your testimony here as to what the production of this well has been since September, 1942 down to date? A. I did not.

Q. If you had taken that into consideration would you have changed your opinion?

Mr. Weymann: Objected to as being speculative.

The Court: I think it is only argumentative.

Mr. Weymann: Argumentative.

The Court: Sustained.

Q. By Mr. Dechter: Do you recall what life you estimated for the wells at Signal Hill of the Italo Company in 1928? A. No, I do not.

Q. I will ask you if it isn't a fact that wells at Signal Hill have continued to produce for as long as three times beyond the estimated life by petroleum engineers?

Mr. Weymann: Objected to as incompetent, irrelevant and [328] immaterial, no proper foundation laid, no showing that wells in Signal Hill are comparable to wells in Playa del Rey field.

The Court: The objection is overruled.

A. In answering your question, Mr. Dechter——

The Court: First, just answer it yes or no, and then you may explain it.

The Witness: It is a question I cannot answer yes or no to.

The Court: Read the question, please, Mr. Reporter.

(The question was read.)

(Testimony of Graydon Oliver.)

The Court: Well, it apparently calls for a yes or no answer, but the court will permit the witness to answer it in his own way in view of his statement that he cannot answer it yes or no.

A. I have no particular knowledge of what other petroleum engineers have estimated the life of wells at Signal Hill. I have only my own references. Furthermore, the sands at Signal Hill are several thousand feet in thickness, whereas at Playa del Rey they are a maximum two or two hundred fifty feet in thickness. The fields are not comparable at all, and an analogy cannot be drawn between wells at Signal Hill and wells at Playa del Rey. There is no basis for comparison.

The Court: Read that question, Mr. Reporter.

(The question was reread.) [329]

The Court: Well, I think now in view of the witness' answer, that question could have been answered either yes or no, or by merely stating he did not know the answer.

Mr. Dechter: I move to strike out the answer as not responsive.

The Court: It may go out.

Q. By Mr. Dechter: Mr. Oliver, I will ask you if you do not know that there are many wells in Southern California which have produced for a period greater than what the petroleum engineers have estimated their life to be?

Mr. Weymann: That is objected to as being incompetent, irrelevant and immaterial.

The Court: The objection is overruled. I think

(Testimony of Graydon Oliver.)

it is proper to test the knowledge of the witness on the particular fact with which he has presented testimony.

Mr. Weymann: Exception.

Q. By Mr. Dechter: Will you answer the question?

A. I believe that there have been known cases in which wells have continued to produce longer than the estimates previously given to them.

Q. Isn't it a fact, Mr. Oliver, that the opinions of petroleum engineers have been gradually changing in the last 20 years as to the probable life of wells?

By changing, I mean that at first they started out by estimating the life of a well at 18 months, and then three years, and then five years, and then ten years? [330]

A. Developments in reservoir engineering have changed the ideas of petroleum engineers as to the amount of recoverable oil that might be incidental to a certain property or a certain well. I personally was responsible for a great deal of this development in the technique of core analysis in which we were pioneers. In the Playa del Rey area I fortunately have a considerable amount of data upon the volumetric amount of oil actually in the formation, and much of this data was used in the compiling of the decline curve which I made in forecasting these productions.

Q. Well, in summary, your answer is that the opinions of engineers have changed to give greater

(Testimony of Graydon Oliver.)

periods of life to oil wells in Southern California.
Isn't that correct? A. Some wells.

Q. Now, in projecting the estimate of reserve, showing you page 12 of your report, you showed an estimated production of 6400 barrels. Is that correct? A. For the first year.

Q. Now, at the time you made this report in July of 1945, you knew, as shown by your summary of production by records as contained on page 18, that that well had produced 6,614 barrels of net oil, did you not? Strike that had produced 7,255 barrels of net oil. Is that correct?

Mr. Weymann: That is objected to as improper cross examination. I think counsel is attempting here to show the [331] same thing that is shown by the exhibit that is excluded.

Mr. Dechter: This is your own testimony, not my exhibit.

Mr. Weymann: No. You are cross examining him on actual production.

Mr. Dechter: You have offered that in evidence as your exhibit.

Mr. Weymann: May I have the question read, please?

The Court: Read the question, please.

(Question read.)

The Court: Mr. Weymann and Mr. Dechter, are you referring to Plaintiff's Exhibit 8?

Mr. Dechter: That is correct, your Honor.

Mr. Weymann: I have a copy of this.

The Court: The objection is overruled.

(Testimony of Graydon Oliver.)

Q. By Mr. Dechter: Do you want the question read again?

A. No. I believe I understand the question. The production for the year 1942 was 7,255 barrels which included the months of October, November, and December, which were subsequent to September 28, 1942. My estimates were based upon the continued operation of the well as reflected by the records prior to September 28, 1942, and did not take into consideration the operation of the well subsequent to September 28, 1942. [332]

Mr. Dechter: May I have the question read again, Miss Reporter please,

(Question read.)

Mr. Dechter: I move to strike out the answer as not responsive. I think the question calls for a yes or no answer, whether he knew when he made this estimate of that particular fact.

The Court: It may go out. Just answer the question, please, Mr. Oliver.

The Witness: I knew the production of the well for the year 1942, yes.

Q. By Mr. Dechter: I will ask you if it isn't a fact that at the time you made this valuation in which you estimated the production for the year 1943 at 5800 barrels, that you knew that for the first six months of 1943 the well had already produced 4,124 barrels, showing you Plaintiff's Exhibit No. 8.

A. I knew the production of the well, actual

(Testimony of Graydon Oliver.)

production of the well, for the first six months of 1943, yes.

Q. What in your opinion would be the fair market value to replace the personal property and equipment on Block's Well No. 10 in October, 1943 for the purpose of operating the well as a producing oil well?

A. The only estimate that I can give would be the replacement value new of all the equipment contained in the [333] inventory taken by the Union Oil Company on September 28, 1942, which, according to my estimate, was \$19,846.85.

Q. Now, isn't it a fact that you subsequently discovered that inventory was incomplete because it did not contain the tubing, rods and pumping equipment, and that the inventory was amended to include those items as shown by Plaintiff's Exhibit C of its amended complaint as contained on Pages 1 to 4 thereof?

A. The inventory contained on pages 1 to 4, I believe, is identical—no, it is not.

Q. You were the one that called the attention of the United States Attorney to the fact that that equipment should be on there, isn't that a fact, Mr. Oliver?

A. That is correct.

Q. And as a result of your calling that to their attention, the following letter was written by the Union Oil Company on August 6, 1943, copy of which was sent to you, copy to Mr. Brett, the United States Attorney, and copy to the Defense Plant Corporation. reading as follows:

(Testimony of Graydon Oliver.)

“Union Oil Company of California
Union Oil Building
Los Angeles, California

August 6, 1943

Law offices of Raphael Dechter
633 Subway Terminal Building
Los Angeles 13, California
Attention of Miss Jessie Dolfin [334]

“Dear Miss Dolfin:

“In reply to your request of July 28, 1943, re-inventory of material and equipment taken over by the Defense Plant Corporation from Block’s Oil Company Well No. 10, please be advised that the record of casing, tubing and rods was not available at the time the original inventory was prepared. Subsequently it has been determined that there was in the hole the following material: 4,900 feet of 3/4 inch sucker rod, 1500 feet of 7/8 inch sucker rod, 6,487 feet of 2-1/2” ten thread upset tubing, 6,275 feet of 7-inch casing, and 306 feet of 5-3/4 inch liner.

“Very truly yours,

“R. A. KEANS.”

The bottom of the letter shows that copies were mailed to Defense Plant Corporation, Irl D. Brett, United States Attorney, and Mr. Graydon Oliver.

Do you recall receiving that letter?

A. I believe I did. I don’t recall particularly.

Q. Now, I will ask you with those items added

(Testimony of Graydon Oliver.)

to your inventory, what would be the fair market replacement value of that equipment on Block's No. 10 well as an operating well in October of 1943?

A. May I see that letter again, please?

Q. Yes (handing document). [335]

A. Well, those items were all included in the inventory which I used on my estimate of \$19,-846.85. That would be the estimate of replacement cost new as of September 28, 1942.

Q. Will you point out in your inventory where those are?

The Court: Pardon me just a moment. I think it is time for our noon recess.

Mr. Oliver, I believe you have stated that so far as this equipment was concerned, there was no substantial difference in the value between the two dates we have mentioned, September of 1942 and October of 1943?

The Witness: In an as is condition, your Honor, yes.

The Court: Very well. The court will recess at this time until two o'clock. The jury will bear in mind the admonition of the court heretofore given.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [336]

Los Angeles, California,

Friday, July 27, 1945. 2 p.m.

The Court: First, I want to ask pardon for being late. I am very sorry.

The jurors are all present; is it so stipulated?

Mr. Weymann: So stipulated, your Honor.

Mr. Dechter: So stipulated, your Honor.

The Court: Proceed.

GRAYDON OLIVER,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. Dechter:

Q. Mr. Oliver, I will ask you if in arriving at your valuation of the leasehold at \$3150.00 you took into consideration the figures contained in your summary of actual production, which I believe is Plaintiff's Exhibit 8, which shows that for the period January, 1941 to September, 1942 the well produced a total of net oil of 10,972 barrels.

The Court: Read that question, please.

(The question was read.)

A. Yes, I took into consideration all the production figures of the well prior to September 28, 1942.

Q. By Mr. Dechter: You took into consideration the [337] fact that that amount of oil would

(Testimony of Graydon Oliver.)

net the operator for that period approximately \$3,000.00, figuring it at 80 cents a barrel?

A. I took into consideration the production figures. I don't believe that I converted that into the amount of money that the operator received.

Q. In other words, you considered that the well was not worth more than 21 months of past production?

A. I concluded that the probable market value approximated \$3150.00.

Q. I will ask you if it isn't a fact that the map which is on the blackboard and marked Plaintiff's Exhibit 1 is only a part of what the Division of Oil and Gas designates as the Playa del Rey oil field?

A. I don't believe I understand your question, Mr. Dechter.

Mr. Dechter: The reporter will read it.

(Question read.)

The Witness: If you will show me the exhibit. I am not familiar with the exhibit.

Q. By Mr. Dechter: You may look at it.

A. Is this the one under the chart?

Q. Yes.

Mr. Weymann: I think, Mr. Dechter, that is not Plaintiff's Exhibit 1. [338]

The Court: It isn't Plaintiff's Exhibit 1.

Mr. Dechter: What is it?

The Court: The map is Exhibit 6.

Mr. Dechter: I will amend my question, your Honor. I thought that was the first one.

(Testimony of Graydon Oliver.)

The Court: And it is only marked for identification. [339]

Mr. Weymann: I will offer it in evidence now.

Mr. Dechter: We have no objection subject to the reservation mentioned at the opening of the trial.

The Court: It may be received.

(The document referred to was marked as Plaintiff's Exhibit No. 6, and was received in evidence.)

The Witness: I do not believe that covers the entire area which the Division of Oil and Gas designates as the Playa del Rey oil field.

Q. By Mr. Dechter: In addition to the area shown on this map, there is an area which takes in most of Venice, does it not, lying along the ocean that is included in the Playa del Rey field?

A. I don't believe that is called the Playa del Rey field. I believe it is called Venice, if I am not mistaken. They usually combine the two together, however.

Q. I am asking you as an expert if the Division of Oil and Gas does not designate the entire territory including Venice as the Playa del Rey oil field?

A. I think it is identified as the Playa del Rey Venice oil field.

Q. Well, it is a part of what the Division of Oil and Gas designates as the Playa del Rey oil field.

A. This map covers a part of what the Division of Oil and Gas calls the Playa del Rey oil field, yes.

(Testimony of Graydon Oliver.)

Q. When were most of the wells in the Venice section of the Playa del Rey oil field brought in, Mr. Oliver?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial.

The Court: Well, it appears to the court to be preliminary. You may answer if you know.

The Witness: I believe the discovery of the Venice section was made about the latter part of 1928 or the first part of 1929. My associates at that time, Mr. A. A. Curtiss, with whom I made my office, was responsible for the discovery of that field, so I was quite interested in it at the time.

Q. By Mr. Dechter: And isn't it a fact that wells in the Venice oil field are still producing that were brought in in the years 1928, 1929?

Mr. Weymann: That is objected to as no proper foundation having been laid. It has not been shown that the wells in the Venice oil field are producing in the same structure as wells in the Playa del Rey oil field, as designated on the map, Plaintiff's Exhibit 6.

The Court: I think the objection is good. Sustained.

Mr. Dechter: May I make an observation?

The Court: I have already ruled. Now, if you want to lay a further foundation, it may be proper.

Q. By Mr. Dechter: I will ask if it isn't a fact that there are wells producing in the Venice part of the [341] Playa del Rey field which have been on production for over 15 years?

(Testimony of Graydon Oliver.)

Mr. Weymann: The same objection.

Mr. Dechter: My purpose, your Honor——

The Court: Wait until Mr. Weymann finishes, He arose first.

Mr. Weymann: The same objection, on the ground that no proper foundation has been laid to show that the wells to which Mr. Dechter is referring are on the same structure as the Playa del Rey field.

The Court: Now, what have you to say, Mr. Dechter?

Mr. Dechter: Your Honor, my contention is that it is one and the same field. It is designated by the Division of Oil and Gas as the same field, but my primary purpose is to show that wells do have a long life. Here are wells in the same field designated by the Division of Oil and Gas that have been producing for 15 years and are still producing in commercial quantities.

The Court: I think you should ask him some preliminary questions as to the similarity of the wells and the type of oil. It seems to the court that would be desirable. The objection is sustained.

Q. By Mr. Dechter: I will ask you if it isn't a fact that the Union Oil Company has wells in both the Venice section and the Del Rey section of the Playa del Rey field? [342]

A. Yes. I believe the Union Oil Company has wells in both sections of the field.

Q. And isn't it a fact that the lease known as the King Vidor lease lies partly in what is known as the

(Testimony of Graydon Oliver.)

Del Rey section and partly in what is known as the Venice section of the Playa del Rey field?

A. I believe that is true.

Q. I will ask you if it is not a fact that wells brought in in 1928 and 1929 by Union Oil Company on that lease are still producing?

Mr. Weymann: That is objected to on the ground that no proper foundation has been laid. The fact that they were brought in on the same lease is not indicative that it was on the same structure.

Mr. Dechter: The King Vidor lease is designated on your map.

Q. By Mr. Dechter: Will you step to the board, Mr. Oliver, and indicate to the court and jury where the King Vidor lease is?

A. I believe this is a portion of the Vidor lease right in here (indicating).

Q. Which has on it leases marked 5, 15, 10, 11, 16, 13, 6, 8, 7, 9, 12 and 7.

The Court: Let Mr. Clifton take off that top sheet. Will you read the question?

(Question read.) [343]

The Witness: There are some wells on that lease that were completed in 1935 in the area you mentioned or thereabouts that are still producing, and there are other wells that have not been producing for quite a number of years. I do not have the exact records with me, but it would be very simple to dig them up and show them to you.

Q. By Mr. Dechter. Alongside this may there

(Testimony of Graydon Oliver.)

is a legend which shows what wells are producing, what wells are idle, and what wells have been abandoned, is there not?

A. That is correct.

Q. Do you see any wells marked abandoned on the Vidor lease?

A. According to the legend on the map they construe these wells to be producing, but actually the production records show they have not been producing for a considerable period of time.

Q. When did you see those production records?

A. I have all the production records up to September, 1942.

Mr. Dechter: May I have a stipulation from you, Mr. Weymann, for the purpose of the record, as of what date this map was prepared?

Mr. Weymann: The map was prepared——

Mr. Dechter: Here at the bottom it says, "Prepared by George L. Schmutz for the Department of Justice Lands Division [344] June 7, 1943." Is that correct?

Mr. Weymann: I will stipulate it was prepared June 7, 1943.

Mr. Dechter: I will accept the stipulation.

I will withdraw the former question of Mr. Oliver.

Q. By Mr. Dechter: Mr. Oliver, are you familiar with the well located in the middle of the street on La Cienaga between Third and Beverly Boulevard?

A. Yes.

Q. For how long has that well been producing?

(Testimony of Graydon Oliver.)

A. Well, I couldn't say, Mr. Dechter. I recall it having been producing as early as 1924, '25, to my recollection. It may have been producing many years prior to that.

Q. At least it was producing when it first came to your attention in 1924? A. Yes.

Q. And that is part of the old Hancock-LaBrea field, is it not?

A. I believe it is called the LaBrea Salt Lake field, if I am not mistaken.

Q. You don't know the circumstances as to why that well was left there in the middle of the street, do you?

A. I have heard them, but I don't recall now, no.

Q. You didn't take that into consideration in making your opinion on this well? [345]

A. Not at all.

Q. Are you familiar with the sales of royalties made in this very court room in the matter of Diversified Royalties?

A. I have been familiar with the sales of royalties made by Diversified Royalties, yes, but I can't recall them at the moment.

Q. Are you familiar with the fact that some of the royalties were sold on the basis where the buyer would not get his money back for 10 or 13 years based on the income then being produced?

A. Mr. Dechter, I would have to know the actual property and investigate it. It is very difficult for me to answer a question like that. I really can't answer it.

(Testimony of Graydon Oliver.)

Q. Are you familiar with the fact that Diversified Royalties before it went into bankruptcy would sell royalties to the public on the basis where the buyer would not get his money back for periods ranging from 7 to 12 years?

A. In a general way I am familiar with many of the royalties that were sold by Diversified Royalties as I had to, upon various occasions, value some of those royalties; but I don't recall specifically what they were sold at. I made estimates of the recoverable oil incidental to many——

Q. That isn't my question. All I am asking you is if you are familiar with the fact. You can answer it yes or no and then explain it as much as you want. My question, Mr. [346] Oliver, simply is Are you familiar with the fact that sales——

The Court: I think that the answer is sufficient to show he is not familiar with it.

Mr. Dechter: Very well, your Honor. That is all, your Honor.

Redirect Examination

By Mr. Weymann:

Q. Mr. Oliver, calling your attention to Plaintiff's Exhibit 6, and with particular reference to the well designated as Colly No. 1, was that one of the wells in the sublease, the subject sublease in this action? Will you step to the board, please?

Mr. Dechter: We will stipulate, if you want a stipulation, Mr. Weymann, that the well formerly known as Colly Well No. 1 is the same as Block's Well No. 10, if that is what you want to know.

(Testimony of Graydon Oliver.)

Mr. Weymann: Very well. And will you stipulate that the well formerly known as Colly No. 2 was included in the Block sublease?

Mr. Dechter: It is included in one of the parcels.

Mr. Weymann: In one of the parcels?

Mr. Dechter: Yes.

Mr. Weymann: On which the defendant here has a sublease?

Mr. Dechter: That's right. But that sublease has been abandoned and that well abandoned. [347]

Mr. Weyman: Will you stipulate——

Mr. Dechter: We are making no claim for any damages for that.

Q. By Mr. Weymann: Mr. Oliver, do you know when Colly Well No. 2 was placed on production?

Mr. Dechter: Your Honor, we will object to this upon the ground it is immaterial and not proper redirect.

The Court: I think it is a matter of redirect examination.

Mr. Weymann: It is redirect; he has gone into production.

Mr. Dechter: Can I ask the witness what he is using for the purpose of testifying? There has been no foundation laid for the use of any papers, your Honor.

The Court: What are you referring to, Mr. Oliver?

The Witness: I am referring to my own notes, your Honor, relative to this particular well that Mr. Weymann has asked me a question about.

(Testimony of Graydon Oliver.)

A. This well was completed on June 24, 1935, at the rate of approximately 2300 barrels per day.

The Court: The only question was when was it placed on production. You say it was completed for production on that date.

The Witness: June 24, 1935.

The Court: Just be seated now. [348]

Q. By Mr. Weymann: Was that well abandoned, Mr. Oliver?

Mr. Dechter: We will stipulate it was abandoned, your Honor. I so stipulated already. We are making no claim for compensation based on that particular well and leasehold.

Q. By Mr. Weymann: Mr. Oliver, will you go to that map, please, and point out the wells which in your opinion are in the same drainage area and on the same structure as the Colly Well No. 10 which to your knowledge were abandoned prior to September 28, 1942?

The Court: You said "Colly Well No. 10;" is that the same as Block Well No. 10?

Mr. Weymann: Block Well No. 10, I mean, your Honor.

The Witness: You wish me to call them off, Mr. Weymann?

Q. By Mr. Weymann: Yes, call them off.

A. It is rather difficult for me to read them from this particular map. I can point out those that have been abandoned merely from the symbols on the map, but I will have to refer to my records. These wells here and here (indicating).

(Testimony of Graydon Oliver.)

Mr. Dechter: If the witness can't answer the question I don't think he should volunteer anything.

Q. By Mr. Weymann: Confining yourself for the moment, Mr. Oliver, to the wells which were drilled on the original Spangler lease.

A. I believe the original Spangler lease was this portion [349] in green and the portion in purple, was it not? This well here was abandoned (indicating), No. 13.

(The answer was read.)

Mr. Dechter: Is that a question or an answer? I move to strike it.

The Court: Read it again, please.

(The answer was reread.)

The Court: There was no answer to the question asked by Mr. Oliver, and then he proceeded. Now, what is your motion?

Mr. Dechter: I move to strike out the answer of Mr. Oliver as to what he believes, as his conclusion and guess; upon the further ground, as to the question, that no proper foundation has been laid to show what his knowledge is.

The Court: It may go out.

Mr. Weymann: Pardon me. I didn't hear that.

The Court: The Court granted the motion to strike it. Now, if you have any further questions you may proceed, Mr. Weymann. The granting of the motion of the court doesn't prevent you from proceeding along the same line, but it is rather confusing in the record and should be straightened out.

(Testimony of Graydon Oliver.)

Q. By Mr. Weymann: I will ask you this question, Mr. Oliver: Do you know how many wells in the same area, same drainage area as Block's Well No. 10 were abandoned prior to September 28, 1942, if any? [350]

A. I could give those to you from my records.

Q. Have you your records here? [351]

A. Mr. Weymann, my records do not appear to be in shape so that I can answer that question in a short period of time. The only answer that I can make to that question is that there were a great number of wells having a drainage in the same basin in the same area which the Colly No. 10 well was draining from that were abandoned prior to September 28, 1942, but I would have to go into my records to get the list of those wells.

Q. Mr. Oliver, you testified shortly before the noon recess as to the replacement cost of the equipment in the Block's well as being \$19,846.85. In your opinion was it economically feasible to reproduce that equipment as it was on September 28, 1942, upon that date and for the same purpose for which it had been used?

Mr. Dechter: To which we object on the ground that it calls for a conclusion of the witness.

The Court: Read the question, please.

(Question read.)

Mr. Dechter: And upon the further ground that it is entirely incompetent, irrelevant and immaterial. Nobody asked the government to come and take over this equipment and personal property,

(Testimony of Graydon Oliver.)

and all we are asking them to do is pay the fair market value of that equipment as of that date.

Mr. Weymann: As to the first objection, the witness is qualified as a petroleum engineer, as a valuation engineer, [352] and necessarily qualified to determine the cost of the production of a well; and on the second ground, that we are entitled to show the actual market value of that equipment, and the question of whether it can be used or whether it is economically feasible to reproduce that for the purpose of continuing the production of that well is certainly something we are entitled to have go into the record.

Mr. Dechter: May it please the court, we have no objection to their showing what the actual market value of that equipment was, but what might have been economically feasible for a major oil company to operate and what might have been economically sound for an individual is a matter of difference of opinion on the part of operators.

The Court: Well, Mr. Weymann, I think Mr. Oliver is qualified to answer the question, but it occurs to the court that it wouldn't be so very helpful. I don't know. I will ask you about it, but it seems to the court that what you are interested in is the value of the equipment as it was at that time or at that place and the kind of equipment it was.

Mr. Weymann: Well, that is what I am interested in, your Honor, but then this further question arises. If it was not economically feasible to reproduce it for the purpose of operating that well, then

(Testimony of Graydon Oliver.)

its only value would be its market value for the purpose of taking it away.

The Court: Well, this referred to new equipment. [353]

Mr. Weymann: That is, the witness had testified to the replacement value of the equipment now on the well.

The Court: That is with new equipment?

Mr. Weymann: With new equipment, yes.

The Court: But could it be replaced and the well operated with used equipment, Mr. Oliver?

The Witness: No.

The Court: It would have to have new equipment?

The Witness: No. It would be impossible to replace the casing in the hole with new equipment.

The Court: I don't believe Mr. Weymann included that casing in the hole which could not be removed. He said that they referred to that part which we will designate as personal property and a portion of the casing which could be removed which was about eight or nine hundred feet.

I really don't understand the purpose of your question, Mr. Weymann. It seems to me what we are concerned with is the value of the equipment as it was there and the date would be either October 4, 1943, or September 28, 1942, and the general testimony is to the effect that there was no substantial difference in the value.

Mr. Weymann: What I am trying to arrive at now is the market value of that equipment.

(Testimony of Graydon Oliver.)

The Court: As it was?

Mr. Weyman: As it was. [354]

The Court: Well, I think that is entirely proper.

Mr. Weymann: But the point is this. Its market value would differ materially I expect to show, if it could be used in connection with that well, if it was economically feasible to use it in connection with that well, or if it would have to be removed to some other site to realize its [354-a] highest market value, and that question is a preliminary question to determine that point.

The Court: The objection is overruled. You may answer.

Mr. Dechter: May I note an exception.

Mr. Weymann: Will you read the question, please?

The Court: If you please, Miss Reporter.

(Question read.)

The Witness: Well, I don't see how it could be replaced. In other words, it was used equipment and to duplicate the exact conditions of that used equipment and replace it, I don't think it would be economically feasible.

Mr. Dechter: We move to strike out the answer, your Honor, as a conclusion of the witness and on the further grounds that it is incompetent, irrelevant and immaterial, and has no bearing on the fair market value of the equipment at the time of its lawful taking.

The Court: The motion is denied. Proceed.

(Testimony of Graydon Oliver.)

Mr. Dechter: May I note an exception?

The Court: Yes.

Q. By Mr. Weymann: Mr. Oliver, did that valuation which you gave of \$19,846.85 include the casing and the liner which could not be removed, which constituted part of the realty?

A. Yes.

Q. What in your opinion is the fair market value of [355] the equipment less the casing and the liner in the well as it was on September 28, 1942?

A. I believe that I have already testified——

Q. And not used in connection with the Block's well No. 10?

Mr. Dechter: The same objection to the question, your Honor, on the ground that it is incompetent, irrelevant and immaterial. We are not interested in equipment lying in someone's yard. We are interested in the value of equipment located at this well and used in connection with this well.

Mr. Weymann: That is the very bone of contention here, your Honor. The defendant is asking as a separate item, not as something making up a part of the value of the well as a whole, but is asking a separate award for this equipment as it was used at that time. Now, either the equipment should be valued as part of the well for the production of the future oil and then valued at its salvage value, or if it is valued as of October 4, 1943, then we will pay for it, and if we pay for it in connection with the well, we are paying for it twice.

(Testimony of Graydon Oliver.)

The Court: The objection is overruled. You may answer.

The Witness: The only value I could assign to it——

The Court: Oh, no. What was the value? That means the value in money, in dollars.

The Witness: I am not prepared to answer your Honor. [356]

The Court: Well, what was the value in money on that date, the fair market value on that date used in connection with the well as it was used?

The Witness: It had a salvage value on that date.

The Court: No, no. Don't give the salvage value, just give the value as it was on that date. If there is any objection on the part of either party to these questions, you may feel free, of course, to make your objections.

The Witness: It is impossible for me to make severance of the physical equipment from the production of the oil well itself. Either you are going to have production of oil or else you are going to have the salvage of the physical equipment, and the two cannot be separated.

Mr. Dechter: We move to strike the answer, your Honor, as being not responsive and being argumentative.

The Court: Yes. It may go out. Will you read the question?

(Question read.)

The Court: You can't give that?

(Testimony of Graydon Oliver.)

The Witness: No, sir.

The Court: On October 4, 1943?

The Witness: No, sir.

The Court: Well, when you gave your statement of the fair market value of the leasehold, did you or did you not include a valuation of the equipment and material within such valuation? [357]

The Witness: I did.

The Court: And you say that that would be substantially the same either on September 28, 1942 or October 4, 1943?

The Witness: Yes, sir, just approximately the same.

The Court: Read that answer, too, because Mr. Oliver was addressing himself to the court and lowered his voice accordingly.

(Answer read.)

The Court: You may proceed.

Mr. Weymann: That is all, Mr. Oliver.

Recross Examination

By Mr. Dechter:

Q. Mr. Oliver, isn't it a fact that a well in an oil field or reservoir drains the sand in that entire field or reservoir?

A. It drains the sand for a distance around the well both depending upon the permeability of the sands and the pressure within the formation, together with the viscosities of the fluid production.

Q. In other words, the oil is migratory and mi-

(Testimony of Graydon Oliver.)

grates from one part of the oil and gas reservoir to another. It does not remain in one spot?

A. Oil is definitely migratory, but it migrates from the lower part of the structure to the upper part of the [358] structure.

Q. And if the Colly Well No. 10 was the only well in this field, then it would drain eventually all the oil in the field, would it not?

A. No, I don't think that is true.

Q. Well, an oil and gas reservoir is just like a tank of fluid, is it not?

The Court: Well, I think he has explained that, Mr. Dechter, that it varies according to the formation in the sand and the viscosity of the oil, that is correct, isn't it, Mr. Oliver?

The Witness: Yes.

The Court: Some oil is more volatile than others and some is very heavy. This is about 19-degree gravity, and that is what you might call just a medium gravity oil. Is that correct?

The Witness: Yes, sir.

The Court: The lighter oil might have a more fugaceous tendency than that of a heavier oil, and then sometimes that might vary according to the permeability of the surrounding sands. Is that correct?

The Witness: That is correct, together with the structural position of the individual well.

The Court: That is right, but it not only is migratory in an up and down movement, but it is

(Testimony of Graydon Oliver.)

somewhat migratory in [359] a lateral movement as well?

The Witness: That is correct.

Q. By Mr. Dechter: Well, when wells are abandoned like the wells you say were abandoned in the vicinity of the Colly Well No. 10, what traction does it have on the remaining well or like Colly No. 10 well insofar as its productivity is concerned?

A. It could have various effects. It could have a very beneficial effect of increasing production from the remaining wells, or it could have an opposite effect by allowing a greater amount of water to penetrate into the sands at that particular location.

Every well that is producing from a reservoir produces to the economic limit, and when that well begins to produce water it takes the water possibly from some other well in the vicinity that is producing, and as I said in the first place, it might have the beneficial effect of enhancing the recovery of oil from the wells that are left.

Q. And the reason it would enhance the amount of oil recovered is that there would be so many less straws, so to speak, to take out the oil as was the case before the other wells were abandoned.

A. All the factors that I previously enumerated must be taken into consideration. The structural position of the individual well is of paramount importance. [360]

Q. The purpose of the laws and regulations of the Division of Oil and Gas on abandonment is to

(Testimony of Graydon Oliver.)

prevent as much as possible the contamination of other remaining oil wells. Isn't that a fact?

A. That is correct.

Q. Now, in viewing the wells that have been abandoned around the Colly well, you don't know whether they were abandoned for mechanical reasons or because of the fact that the operator felt it wasn't sufficiently productive, do you?

A. Yes. I have the records of the wells and at the time I made the valuation I investigated these records to ascertain the reasons for their abandonment and some, as you say, were due to mechanical problems. Some, as you say, were due to the economics where the individual operator did not consider they were worth while producing.

Q. Well, the notice of abandonment, Mr. Oliver, does not state usually that it is abandoned because of mechanical difficulties or because of the fact that it is non-productive to the operator, does it?

A. If you read the well's history and records, I think you can draw your own conclusions as to the mechanical problem involved.

Q. In other words, a well might have been on production for five years producing a large quantity of oil. The operator might have pulled a tubing for the purpose of reconditioning [361] the hole and had a strand of tubing stuck in a hole which he was unable to get out. Doesn't that happen quite frequently?

A. Yes, I assume it does. I have known of it happening.

(Testimony of Graydon Oliver.),

Q. And that would be abandoned for reasons that had nothing to do with productivity of the well, wouldn't it?

A. That is correct, but it would be for an economic reason.

Mr. Dechter: I believe that is all.

Redirect Examination

By Mr. Weymann:

Q. Mr. Oliver, the incident of a strand of tubing being stuck in the hole which you testified sometimes occurs is one of the hazards of oil production, is it not? A. It is. [362]

Q. And that is taken into consideration by a prospective purchaser in purchasing oil-producing property?

A. A person that is acquainted with the purchase of oil property takes those things into consideration.

Q. Will you tell us where Block Well No. 10 is located on this structure? Is it located on the top of the structure or the flank or on the bottom of the structure?

A. It is located on the flank of the structure, relatively low structurally. I could draw you a diagram on the blackboard there that will illustrate what I mean by that.

Q. Will you do that, Mr. Oliver?

(Witness at blackboard.)

A. Subsurface sands in the Playa del Rey area

(Testimony of Graydon Oliver.)

vary in thickness from zero to a probable total thickness of some 300 feet. Wells located at such a position as this (indicating) have found no oil sands whatsoever.

Q. By Mr. Weymann: Pardon me, Mr. Oliver. Can you stand over on this side so the jury can see that?

A. A well located at such a position have found——

The Court: Mark that “A” please.

A. (Continuing) ——at “A” have found no oil sands whatsoever. Wells located at such a location as “B” have found varying thicknesses of oil sand depending upon its structural location.

Wells located beyond B have very often found the sand to [363] contain exclusively water. The well located at B may have been clean at the time it was originally produced, but the water soon came in from the bottom showing that the water table was just beyond or lower than the reaches of the well.

Wells located between the positions of A and B have found varying thicknesses of oil sand, and many times wells located at C have found exclusively gas with a small amount of oil.

The well of the Colly No. 10 on September 28, 1942 was in the relative position of the well B. Probably prior to September 28 that well would have been located in some such relative position as position marked D, but as the oil was depleted from the formation the water came in from this

(Testimony of Graydon Oliver.)

direction (indicating), replacing the depleted oil so that by the time this valuation was made we found the Colly No. 10 well to be at some such relative position as shown by B.

There were a number of wells that delineated this so-called oil-water interface in the reservoir proper. There were also a sufficient number of wells drilled that delineated the position of the pinch-out line shown between the well locations A and C. These are all a matter of study by both myself and the engineers for the Railroad Commission and have been set on paper in graphical forms.

Q. Have you completed your answer, Mr. Oliver? A. Yes. [364]

Mr. Weymann: No further questions.

Recross Examination

By Mr. Dechter:

Q. I show you a contour map, and I will ask you if you recognize that as a contour map of the Playa del Rey field?

A. That is a map of the Venice and Playa del Rey areas showing one engineer's interpretation of of contours on the top of the schist.

Q. That shows, does it not, both the Venice area and the del Rey area as part of one field known as the Playa del Rey oil field, does it not?

A. The contours are continued from the Playa del Rey area over to the Venice area, but it does not necessarily show them to be one area. These

(Testimony of Graydon Oliver.)

are merely contours on top of the schist which is the basement complex of this area.

Q. Some of these wells produce from within the schist itself, do they not?

A. They produce from the fractured material on the top of the schist.

Q. As a matter of fact, the best production is gotten from the top of the schist.

A. I don't believe that is true in the Playa del Rey area.

Q. And that shows that the schist or structural contours extend from the Venice area right on up to the del Rey area, [365] does it not?

A. By like position the structural contours would continue clear on down to El Segundo and elsewhere. This is merely a topographic expression of a subsurface formation.

Q. Well, it shows at what depth the sands are found, in other words, it shows at what depth the oil sand is found in the Venice field and what depth the same sand is found in the del Rey field, does it not?

A. No, it does not. It has no relation to the oil sand.

Q. What does it show in so far as the oil structure?
A. Nothing.

Mr. Dechter: I will ask that this be marked for identification at this time, your Honor.

The Court: Let it be marked as Defendant's Exhibit C, for identification.

(Whereupon, the document referred to was

(Testimony of Graydon Oliver.)

marked as Defendant's Exhibit C, for identification.)

The Court: Is that all, Mr. Dechter?

Mr. Dechter: That is all.

Mr. Weymann: That is all.

The Court: You are excused.

Mr. Weymann: Mr. Wents. [366]

JOHN H. WENTS, Jr.,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please.

The Witness: John H. Wents, Jr.

Direct Examination

By Mr. Weymann:

Q. What is your profession or occupation?

A. I am a consulting geologist, engineer, and appraisal engineer.

Q. Do you maintain an office in the City of Los Angeles? A. I do.

Q. Where?

A. 508 Subway Terminal Building.

Q. Will you state briefly your education and your professional experience as a consulting engineer?

A. I was educated at Stanford University and

(Testimony of John H. Wents, Jr.)

the University of Southern California, attending Stanford University between the years of '23 and '27, University of Southern California between '34 and '39. I was first employed by the Marland Oil Company of California in the valuation and research department as a geologist——

Mr. Dechter: Will you speak a little louder?

A. I was first employed at the Marland Oil Company of California in the valuation and research department as geologist [367] in 1927. I continued that employment until 1929, at which time I was employed by the Associated Oil Company as a petroleum engineer, later as a geologist. I worked in the Associated Oil Company from 1929 to 1934. I was resident engineer and geologist in the central coastal area when I left the employ of the Associated Oil Company.

In 1934 I became associated with the Diversified Royalties, Limited, as chief geologist. I maintained that employment from 1934 to 1939. In 1939 I went into business for myself as a consultant. I have been continuously employed since 1939 as a consultant.

Q. Will you give the names of some of the firms for whom you have acted as consultant?

A. I am retained by the Dominguez Estate Company, the Carson Estate Company, the Watson Land Company, J. Paul Getty, Harold C. Morton, Lebow & McNee, George D. Nordenholt, Kohlbush & Morton, Miller & Miller, the Royal Petroleum Company, Pacific-American Oil Company, Sierra

(Testimony of John H. Wents, Jr.)

Oil Company, St. Francis Oil Company, H. M. Holloway, McMillan Oil Company.

The Court: He just asked you to name some of them.

Q. By Mr. Weymann: And many others?

A. The list goes on.

Q. What is the Dominguez Estates Company?

A. The Dominguez Estate Company is one of the principal owners of oil and gas lands in Southern California. [368]

Q. What were your duties as consultant?

A. I am employed——

The Court: The general duties are consultation regarding production of petroleum?

The Witness: Lease interpretation and production of petroleum, lease maintenance.

The Court: I just want to shorten the time, Mr. Weymann.

Q. By Mr. Weymann: In such duties did you have occasion to appraise oil properties?

A. Yes, I have many times.

Q. And that is including the equipment?

A. Yes, I have appraised equipment.

Q. Have you made any appraisal for any banks?

A. I made appraisals for the Citizens Bank, the Security-First National Bank, the Bank of America, in Los Angeles; Chase National Bank and Corn Exchange Bank of New York City.

Q. In connection with the purchase and sale of oil royalties?

A. Oil royalties and oil properties, yes.

(Testimony of John H. Wents, Jr.)

Q. You were employed by the Department of Justice to make an appraisal of the subject property, were you not?

A. I was employed to make an appraisal of the subject property.

Q. What did you do for the purpose of making such [369] appraisal?

A. My first step in making the appraisal was to obtain a copy of the so-called master lease, which is the Spangler lease. Then, also, to ask and be furnished with material with respect to the assignment or sublease which occurred by virtue of a disassociation of part of the Spangler lease. I then obtained permission to examine the records of the well which we refer to now as Block 10, which was originally drilled by the Colly Oil Company as Colly No. 1.

I went to the Division of Oil and Gas and obtained the record which commenced with the filing of the notice of intent to drill that well and carried through to its completion. I examined the production record of that well from the time it was put on production through to the date of the valuation.

I also examined the production of the well since it was taken over by the Defense Plant Corporation.

Q. In forming your opinion as to the value of the subject property what facts, what factors, did you take into consideration?

A. I might add that in forming my opinion I was also governed by the records and histories and

(Testimony of John H. Wents, Jr.)

production data concerning other wells in the locale of the Block 10. After examining that data I constructed from the Block No. 10 well a production decline curve. I used that production decline [370] curve as a basis for an estimation of future production by projection of the curve.

Q. Will you kindly state what a production decline curve is?

A. A production decline curve is simply a plot, a pattern of the production of the well in barrels for time intervals, that is all.

Q. Do you know of that method of appraisal of arriving at a valuation as one commonly used by petroleum engineers and geologists?

A. It is the common approach of petroleum engineers and geologists.

Q. After making this examination and investigation have you arrived at an opinion as to the fair market value, first, of the 10 $\frac{7}{12}$ overriding royalty of the defendant in the subleases owned by the defendant, and, secondly, the fair market value as of September 28, 1942, of the leasehold estate and the well operated thereon?

A. I have.

Q. Will you kindly state what your opinion is?

A. It is my opinion that the 10 $\frac{7}{12}$ per cent gross overriding royalty interest which I have appraised is valued at \$1168.00. It is my opinion that the operating interest which is inclusive of 70 per cent of the production of the well and the appurtenances thereto is valued at \$5,690.00. [371]

(Testimony of John H. Wents, Jr.)

Q. Now, Mr. Wents, will you kindly give your reasons?

The Court: Let me ask a question, if you don't mind, right there.

Mr. Weymann: Surely.

The Court: Mr. Weymann, was there any substantial change in the valuation of the leasehold interest between September 28, 1942 and October 4, 1943?

The Witness: In so far as that pertains to the oil, yes; but not as to the other property which might be a part of the leasehold interest.

The Court: As to the——

The Witness: Mechanical equipment, no.

The Court: It would be substantially the same?

The Witness: Substantially the same in my approach.

The Court: Now, proceed.

Read the question that was asked. I believe it was to give your reasons, Mr. Wents, for these valuations.

The Witness: I used the analytical method of approach to a valuation problem——

Mr. Dechter: I can't hear you.

The Witness: I used the analytical method of approach in oil and gas valuations. In other words, I translated from my production decline curve the production by years and obtained a total. I obtained a rate of production by various years. I obtained a total production of 4,793 barrels, which [372] might be allocated to the full 13 1/3 per

(Testimony of John H. Wents, Jr.)

cent gross overriding royalty interest, which divides to 3,804 barrels representing the 10 $\frac{7}{12}$ interest which we are herein concerned with. I translated that number of barrels of oil——

Mr. Dechter: Can I have that figure for the 10 $\frac{7}{12}$ per cent?

The Witness: 3,804 barrels.

I translated that figure into dollars by multiplying by 79 cents per barrel. 79 cents per barrel was arrived at from 77 cents, being the posted price of oil in the district as of the date of valuation, plus 2 cents allowance for gas and gasoline. The dollar return revolved to \$3,005.00. In following the general practice of appraisal engineers I chose a discount factor, my own choice being 10 per cent, and discounted that down until I obtained a PW of \$2,061.00.

The Court: You obtained a what?

The Witness: A PW.

The Court: What is that?

The Witness: Present worth factor, the engineers call it. To me I used the term "PW". [373]

That in turn, in accordance with my own investigations, the outcome of my investigation, I discounted further and obtained what I would call a figure representing the fair market value or worth. That later figure is the figure I cited before, or \$1168.00 for the 10 $\frac{7}{12}$ ths per cent.

Basically the operating interest was appraised in the same fashion. However, in the instance of the operating interest, I had to take into consideration

(Testimony of John H. Wents, Jr.)

the operations cost. I considered that this well could be operated by a potential buyer or by the owner for approximately \$100.00 a month, plus 15 per cent. Now, that gave me a figure of \$1380.00 a year or being the operating cost. Deducting operating costs from gross income which is figured on the same basis as in the instance of the gross overriding royalty on the basis of 79 cents a barrel, I found that a net income could be expected during the life of the production of \$6,133.00.

The Court: What do you estimate to be the life of the production?

The Witness: I estimated it at ten years. Do you want me to read off the figures?

The Court: No. I just asked the question.

The Witness: Using the same deferment factor as previously mentioned, of 10 per cent, I obtained a P. W. of \$4,765.00 for this interest. That is the 70 per cent. [374]

Mr. Dechter: Four what?

The Witness: \$4,765.00. That is not inclusive of any of the value or any appraisal of physical fixtures. That discounts and reduces the fair market value to \$2700.00.

Q. By Mr. Weymann: In arriving at your opinion, did you take into consideration the barrels of water produced from that well?

A. I took into consideration that the well was producing a great deal of water. I didn't consider that water production as an extreme hazard towards its future life.

(Testimony of John H. Wents, Jr.)

Q. Did that water production have any effect on your valuation?

A. The water production is responsible in a measure for my choice of an operating charge.

Q. And on what basis did you choose that operating charge? A. My experience.

Mr. Weymann: You may cross examine.

Cross Examination

By Mr. Dechter:

Q. When did you make your investigation and appraisal?

A. I was employed some time in June of 1945.

Q. And from whom did you secure this sublease that you examined? [375]

A. I secured the data on the sublease from Mr. August Weymann. I didn't say I secured the sublease.

Q. You never saw the sublease?

A. No, I didn't. I asked questions concerning the terms of the lease and they were answered.

Q. Mr. Weymann did not have in his possession for you a full copy of the sublease?

A. Not that I was advised of at all.

Q. Did you ever see the entire basic lease?

A. I saw a copy, I believe it was a copy, of the basic lease and read it in its entirety.

Q. Would you say that you arrived at a valuation of \$4,765.00 for the oil based on the ten-year life without the personal property?

A. Yes, sir. That is—no. That is the net

(Testimony of John H. Wents, Jr.)

return there or P. W. of net operating income. That is the present worth or net operating income.

Q. That is the present worth of the oil reduced on a ten per cent per annum compounded discount factor?

A. That is the figure arrived at by the use of a deferment factor.

Q. Ten per cent per annum compounded?

A. Ten per cent per annum compounded and considering the income is payable monthly, is the factor I used.

Q. Compounded at ten per cent each month?

A. Ten per cent yearly basis, and compounded semi-annually.

Q. Now, were you ever engaged in the business of buying and selling used oil well equipment?

A. Not directly in the business of buying and selling used oil well equipment.

Q. Have you owned and operated any wells of your own?

A. I was associated with organizations that owned and operated wells.

Q. What organization?

A. I was with the Savage Oil Company.

Q. What Savage did was drill a wildcat well up in Northern California, isn't that true?

A. It drilled and produced from one well and drilled a second well which it lost. However, I have been associated with many firms in drilling oil wells, not directly in my association. However, I have acted as adviser.

(Testimony of John H. Wents, Jr.)

Q. You were associated as the petroleum engineer advising them where to set casing and what sands there were and things of that kind?

A. Yes, and in the choice of material selected for the operation and cost of material.

Q. In other words, you would suggest that they use ten-inch casing instead of 7-inch casing?

A. Yes, of specific design, weight and strength.

Q. Did you ever buy any used oil well equipment?

A. Various operators whom I have worked for—

Q. Just answer the question, please.

A. Direct, no. I have recommended its purchase.

Q. You had no experience personally in buying or selling used oil well equipment, had you?

A. Only in connection with my employment.

Q. And when you were employed by the Associated Oil Company, you didn't buy and sell any used oil well equipment, did you?

A. No, I did not.

Q. When you were connected with the Savage Oil Company, you were the engineer in connection with the drilling of that well?

A. Yes, I was.

Q. That company ended up in bankruptcy, did it not? A. It did.

Q. And when you were connected with Diversified Royalty, your job was making geological

(Testimony of John H. Wents, Jr.)

reports on the different properties that they contemplated buying royalties in? A. Yes.

Q. And while you were connected with them, you had no experience in buying or selling used oil well equipment? A. No, I did not.

Q. And you don't know what the fair market value of [378] used oil well equipment would be in October of 1943, do you?

A. In my opinion, I do.

Mr. Dechter: Your Honor, I am going to move to strike any portion of the testimony of this witness insofar as it pertains to valuation of personal property, upon the ground that it clearly appears the witness is not qualified.

The Court: The motion is denied.

Mr. Dechter: Exception.

Q. What in your opinion was the fair market value of this personal property as shown on the inventory Exhibit C of Plaintiff's Amended Complaint? You have seen that inventory, haven't you?

A. Yes, I examined that inventory. The salvage value or market value——

Mr. Dechter: I move to strike the answer, if the court please.

The Court: I don't believe he completed his answer, had you?

The Witness: No, I had not.

The Court: Read the question and the answer so far as it goes, and then you may complete your answer.

(Testimony of John H. Wents, Jr.)

(Record read.)

Mr. Dechter: Let me amend that question to include as of October, 1943.

The Court: Just answer as to the market value.

The Witness: As of October, 1943, that material had a market value in my opinion of \$4,900.00.

Q. By Mr. Dechter: In October of 1943 did you have any experience in buying or selling any tubing?

A. I did not buy or sell any tubing in 1943. However, I was very familiar with the prices quoted.

Q. What was the O. P. A. price on 2½-inch upset tubing?

A. Second-hand tubing was 25 cents per foot in the quality.

Q. And what in your opinion was the O. P. A. ceiling price on 7/8-inch sucker rods?

A. 7 cents a foot. That is the value figure. In other words, the O. P. A. ceiling price—maybe I should correct my answers, Mr. Dechter. I am not familiar with the ceiling price as a ceiling price. However, I am familiar with trading prices which in my opinion are under the ceiling price and not over. The figure I gave you represented trading prices in the field at which I could obtain comparable equipment to that which I appraised.

Q. And you could buy sucker rods at 7 cents a foot?

A. Yes, sir.

Q. Did you buy any sucker rods in the year 1943?

A. There were sucker rods bought.

(Testimony of John H. Wents, Jr.)

Q. Did you buy any in the year 1943? [380]

A. No, I did not.

The Court: Will you explain your answer?

The Witness: I didn't buy any sucker rods in the year 1943. However, at my insistence sucker rods were purchased at the price that we figured at 7 cents.

Q. By Mr. Dechter: From whom were those sucker rods purchased?

A. I believe some of those sucker rods were obtained from the Oil Tool Companies.

Q. By what company were those rods purchased?

A. I believe the Royal Petroleum Company got some of those rods.

Q. What was the reasonable market value of second-hand $\frac{3}{4}$ -inch sucker rods?

A. The first figure was 6 cents a foot.

Q. 6 cents a foot? A. Yes.

Q. For $\frac{3}{4}$ -inch rods? A. Yes.

Q. Did you ever buy any $\frac{3}{4}$ -inch sucker rod?

A. Yes. They came from the same source.

Q. You made that purchase yourself?

A. No, I did not. The purchases were made by Royal Petroleum that I am acquainted with.

Q. That is what somebody told you he paid for it? [381]

A. That is what I was informed they were worth and they paid for them.

Q. What was 7-inch casing worth in October of 1943? A. \$1.25 per foot.

(Testimony of John H. Wents, Jr.)

Q. What was 5 $\frac{3}{4}$ -inch liners worth in October of 1943? A. Approximately \$1.00 a foot.

Q. What was the value of 5 $\frac{3}{4}$ -inch liner in September of 1942?

A. Approximately \$1.00 a foot.

Q. What was the value of 7-inch casing in September of 1942?

A. Approximately \$1.25 per foot.

Q. What was the value of one 122-foot McClintock and Marshall steel derrick complete?

A. Erected or down?

Q. Erected. A. \$1,250.00.

Q. Where could you buy a steel derrick erected for \$1,250.00?

A. In other words, if I may explain my answer?

Q. Yes, I wish you would explain it.

A. I took into consideration that if the derrick was erected over this hole, its value would be——

Mr. Dechter: I move to strike out the answer on the [382] ground that it is not responsive. The question is, what was the value of the derrick as erected?

The Court: Motion granted.

The Witness: \$1,250.00 down, and \$1,600.00 the other way. It would be \$1,500.00 to take it down.

The Court: In your opinion it was worth \$1,600.00 erected, and \$1,250.00 if it was taken down and taken apart?

The Witness: No. I am in error there, your

(Testimony of John H. Wents, Jr.)

Honor. In other words, had this derrick been down on the ground ready to move to another location, it would have sold for \$1,600.00. Had it been standing over the hole requiring its moving, the purchaser would have to pay \$1,250.00.

Q. By Mr. Dechter: What was the fair market value of that derrick installed for use in the operation of this oil well? A. \$1,600.00.

Q. You could buy a derrick and install it in that well for \$1,600.00?

A. It was installed.

Mr. Dechter: I move to strike the answer as not responsive and argumentative.

The Court: That is right, it may go out.

Mr. Dechter: Will you read the question, Miss Reporter?

(Question read.)

The Witness: Is that to be answered? [383]

The Court: Yes.

The Witness: No, not and install it.

Q. By Mr. Dechter: Isn't it a fact——

Mr. Weymann: Pardon me. I think he has a right to explain his answer.

The Witness: No, and not to install it, my answer was.

Q. By Mr. Dechter: Isn't it a fact, Mr. Wents, that it would cost you \$6500.00 to buy this derrick and install it in the same condition as it was in October of 1943? A. No.

Q. Isn't it a fact, Mr. Wents, that it would cost you approximately \$4500.00 to \$5,000.00 to

(Testimony of John H. Wents, Jr.)

buy that derrick from the McClintock Marshall Company, which was the predecessor of the Bethlehem Steel Company? A. No.

Mr. Weymann: May I at this time object, your Honor, because the valuation is based on the derrick installed. There is no question here of him buying and installing a derrick on that property.

The Court: Well, it is a matter of testing the knowledge of the witness.

Mr. Dechter: I agree with Mr. Weymann, but I haven't been able to get an answer yet from the witness as to what the value is installed.

Mr. Weymann: I didn't understand that. I asked the [384] court to instruct the jury to disregard that as an element of value. If it is merely a question of testing the knowledge of the witness—

The Court: Well, it is asked for that purpose only, to show the basis of his estimate of value and it is limited to that purpose.

Mr. Weyman: There are a number of figures going in here and a number of statements made by counsel as to value.

Q. By Mr. Dechter: Have you seen this well?

A. Yes.

Q. When did you see it the first time?

A. The first time I saw it, it was very probably immediately after it was commenced.

Q. When did you see it in relation to your making this appraisal?

A. I saw the well in connection with making my appraisal some time in June of 1945.

(Testimony of John H. Wents, Jr.)

Q. Did you see the derrick there?

A. I did.

Q. You saw this equipment as belonging to Mr. Block on the well? A. Yes.

Q. That is, being used in connection with the operation of the well? A. Yes. [385]

Q. Now, assuming that you had this oil well in October of 1943 and you needed a derrick and didn't have one, and you went out in the open market to buy a 122-foot McClintock and Marshall steel derrick complete with crown block, what would it cost you to buy it and have it installed as it was when you saw it? A. Will you repeat the question?

The Court: Read the question, please.

(Question read.)

Mr. Weymann: The question is objected to on the ground that it is incompetent, irrelevant and immaterial, and having no bearing on the market value of a derrick which was installed at the time the property was taken by the plaintiff.

The Court: Objection overruled.

Mr. Weymann: Exception, please.

The Court: You may answer.

The Witness: A 122-foot McClintock-Marshall production derrick—it is not a drilling derrick, but a production derrick. I could have replaced that for \$1600.00. I could have installed it for approximately \$1800.00 on the foundations. In other words, \$3400.00 would be about my aggregate cost.

Q. By Mr. Dechter: Will you tell me where in Southern California in the years 1942 and 1943

(Testimony of John H. Wents, Jr.)

you could have bought a steel derrick of this nature for \$1600.00? [386]

A. There were derricks offered of better quality than this.

Q. By whom, name them?

A. In the Montebello field at that time, \$1800.00.

Q. Isn't it a fact, Mr. Wents, that there has been a shortage of steel derricks for the last five years in Southern California?

Mr. Weymann: That is objected to as argumentative.

The Court: The objection is sustained. It seems to the court that it is not proper cross-examination. There might have been a shortage and at the same time there might have been some available at the prices the witness has stated.

Q. By Mr. Dechter: Have you bought or sold any derricks yourself? A. Three.

Q. Where?

A. In connection with my business for George D. Nordenholt.

The Court: How do you spell that?

The Witness: N-o-r-d-e-n-h-o-l-t.

Q. By Mr. Dechter: When did you buy those?

A. Last winter.

Q. From whom did you buy them?

A. It was bought from John Smith and Barnhart Morrow.

Q. What kind of a derrick? [387]

A. 134-foot drilling derrick.

Q. Steel? A. A steel derrick.

(Testimony of John H. Wents, Jr.)

Q. What did you pay for it? A. \$1800.00.

Q. Where was it?

A. It was in Torrance.

Q. How long had it been used?

A. It had been used at that location approximately six months.

Q. Did you move it out?

A. No. It was moved to another location on the property. It was erected.

Q. It was moved on the same property?

A. Moved on the same property. In other words, that particular derrick had been moved to the property by a drilling contractor as his property and was later acquired by the operator of the property.

Q. And you yourself bought it from Mr. Smith?

A. I was in on the appraisal of the derrick for the account of Mr. Nordenholt, who I am adviser to.

Q. Where did you buy the other two derricks?

A. From Macco Construction Company.

Q. When?

A. For the account of the Sierra Oil Company.

Q. When did you buy them?

A. In the spring of this year.

Q. What did you pay for them?

A. \$1800.00, I think, on each derrick.

Q. What kind of derricks were they?

A. 134-foot drilling derricks, steel.

Q. In connection with your valuation as to the value of the leasehold and equipment, did you consider the value of equipment for use in connec-

(Testimony of John H. Wents, Jr.)

tion with the operation of the oil well or dismantled and salvaged for the purpose of sale elsewhere?

A. Dismantled and salvaged for the purpose of sale elsewhere.

Q. In June of 1945 when you made your investigation and valuation, did you know what the posted market price for 19 gravity oil at the Playa del Rey field had been since the spring of 1943?

A. I did.

Q. And what was that price?

A. I had that price available to me, and I can check it.

The Court: The court will take a recess at this time. The jury will bear in mind the admonition of the court heretofore given. Return when called by the bailiff.

(Short recess.) [389]

The Court: The jurors are all present; it is so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated, your Honor.

The Court: Proceed.

Q. By Mr. Dechter: Mr. Wents, which of the firms you have mentioned did you ever make any valuation appraisals for?

A. For which of the firms?

Q. Yes.

A. Dominguez Estate Company, Carson Estate Company, J. Paul Getty, Watson Land Company, Harold Morton, Lebow & McNee, George Nordenholt, Kohlbush & Morton, Sierra Oil Company, St.

(Testimony of John H. Wents, Jr.)

Francis Oil Company, H. M. Holloway, Associated Oil Company, Marland Oil Company, Diversified Royalties.

Q. When you say "valuation appraisal" you made those for all those companies?

A. Yes.

Q. What was the occasion of your making a valuation appraisal for Lebow & McNee?

A. For the purpose of ascertaining whether or not it would be desirable for them to obtain a loan to further their drilling operations as of a particular time.

Q. In other words, you advise them as to whether it was advisable for them to drill a certain location or not, isn't [390] that correct?

A. No, it is not correct.

Q. In so far as Morton and Dolley is concerned, did you ever make any valuations for them in connection with the purchase of any property?

A. For Morton and Dolley?

Q. Yes.

A. No, not for Morton and Dolley.

The Court: You did for Mr. Morton alone?

The Witness: I did for Mr. Morton and other of the Morton interests.

Q. By Mr. Dechter: You did it for Harold Morton? A. Yes.

Q. In connection with what matter?

A. In connection with the purchase of the property which is now known as the Royal Petroleum Lease, the Carson Lease.

(Testimony of John H. Wents, Jr.)

Q. Who were you representing—Mr. Morton or the Carson Estate?

A. I was representing the Carson Estate Company and Mr. Morton, both, in that location.

Q. The Carson Estate, the Dominguez Estate, and the Watson Land Company are all the same ownership, are they not?

A. No, they are not.

Q. They all maintain the same office together?

A. They maintain an office at 621 South Spring Street.

Q. Did you ever buy or sell any wells in del Rey?

A. I did not buy or sell any wells in del Rey.

Q. You made an appraisal of the fair market value of this Block Well No. 10 leasehold of \$2600.00, is that correct?

A. No, that is not correct.

Q. What did you testify as the present fair value of the leasehold interest?

A. Including the physical equipment?

Q. Excluding the physical equipment.

A. \$2700.00.

Q. Instead of \$2600.00? A. Yes.

Q. Isn't it a fact that according to the records the well produced from January, 1941, to September, '42, when the government took it over, 10,972 barrels?

A. I did not total that period of production.

Q. Do your records show that?

A. I have the complete production record.

(Testimony of John H. Wents, Jr.)

Q. It shows 6614 barrels for the year 1941, does it not? A. 6,614.

Q. It shows 7,255 barrels for the year 1942, does it not?

A. My record does not include that after September 28, 1942. [392]

Q. Then it shows 4913 barrels till the end of September, does it not?

A. My record shows 4877.

Q. Which is substantially the same?

A. Substantially the same.

Q. That makes a total of 10,972 barrels, does it not?

The Court: For what period?

Mr. Dechter: January, 1941, to the end of September, 1942. I believe the witness' records stop at September 27th or 28th.

The Witness: May I have the reporter repeat your figure?

Mr. Dechter: Yes, certainly.

(The question was read.)

A. No.

Q. By Mr. Dechter: What total do you have?

A. I have a total of 11,491.

Q. All right, 11,491. Maybe I am in error. If you multiply that by 80 cents a barrel and deduct the lifting cost that you gave of \$1380.00 a year, that will give you a net return for that period January, 1941, to September, 1942, of approximately \$3800.00, does it not?

A. If your mathematics are correct, yes.

(Testimony of John H. Wents, Jr.)

Q. Well, did you take into consideration that it was only worth \$2700.00 for the leasehold oil rights of a well [393] that had made for 21 months previous thereto approximately \$3800.00?

A. I was appraising what it would produce after September 28, 1942, not that which it had produced before that time.

Q. Isn't that some criterion of what it would produce in the future, what it produced the immediately preceding 21 months?

A. In so far as it may effect the pattern of a general production curve.

Q. A buyer buying a well would take that into consideration, would he not?

A. He takes into consideration the pattern of the past productive record.

Q. Would he not take into consideration the fact that in 21 months preceding the purchase the owner had received a net after paying costs of approximately \$3800.00?

A. I would answer that no.

Q. Did you give any consideration in arriving at your valuation to the fact that the price of oil, the posted price of oil had increased to 94 cents a barrel in the spring of 1943, and that there would probably be a further increase after the war?

A. No, I did not.

Q. Did you use a 10-year life or a 12-year life?

A. I used a 10-year life.

Q. Have you advised Morton and Dolley in

(Testimony of John H. Wents, Jr.)

connection with the drilling of wells in Torrance and Redondo? A. Morton and Dolley?

Q. Yes. A. No, I have not.

Q. Or any of the Morton interests?

A. I have advised the Morton interests, but not Morton and Dolley.

Q. On the drilling of wells in Torrance?

A. Yes.

Q. And in Redondo? A. Yes, I have.

Q. And based upon your recommendation they drilled wells in Redondo?

A. Yes, they did.

Q. The initial production secured in Redondo was 30 to 40 barrels a day? A. Correct.

Q. And how much did they spend to drill a well to produce 30 to 40 barrels a day?

Mr. Weymann: Objected to as improper cross-examination.

Mr. Dechter: Your Honor will recall that Mr. Weymann asked Mr. Oliver about whether it was economical to keep this personal property that was worth so much money on the well [395] to operate. Here are wells being drilled just within the very recent period producing only initially 30 to 40 barrels a day, and we have a right to see what the comparative cost is as compared to this well, which the record shows was 20 to 25 barrels a day.

Mr. Weymann: On the further ground that no proper foundation has been laid for the question, because there is no showing that the Redondo field

(Testimony of John H. Wents, Jr.)

is of the same character, the same structure and the same potential as the Playa del Rey field.

The Court: I think it is not proper cross-examination. Sustained.

Q. By Mr. Dechter: Did you advise Lebow & McNee to drill wells in the Redondo area?

A. Yes, I did.

Q. And the initial production there was approximately 20 to 30 barrels a day?

A. You are in error in that statement.

Q. What was the initial production?

A. From 35 to 55 barrels a day. That is settled production after two weeks.

Q. What is that?

A. The figure I recite as far as initial production, may I qualify that, is a figure that is two weeks after the well commenced producing. I use that as a figure of initial. [396]

Q. Isn't that considered initial production?

A. No; the first 24 hours' production is generally considered as initial. However, I use a more settled figure.

Q. Isn't it a fact, Mr. Wents, that the average lease contains a provision that whether production is commercial or not shall be deemed the average for the first 30-day period after the well is placed on production? A. No.

Q. You never heard that provision?

A. I have heard that, but the average lease does not include that term.

Q. At any rate, that is the flow—those wells had

(Testimony of John H. Wents, Jr.)

to be put on production from the beginning, is that right? A. Correct.

Q. And isn't it a fact that the Redondo area is an extension of the del Rey-El Segundo oil fields?

Mr. Weymann: Objected to as improper cross-examination.

The Court: It is overruled.

Mr. Weymann: Exception.

A. No, it is not.

Q. By Mr. Dechter: Well, they run in the same direction, do they not? A. No.

Q. What depth are wells drilled in Redondo?

A. The completion depth is generally less than 3700 feet. [397]

Q. Are you familiar with what the costs of the Lebow-McNee wells are? A. In general, yes.

Q. What was that cost?

A. Their cost varied from \$22,500.00 to approximately \$27,000.00.

Q. Are you familiar with the initial production of wells drilled by Mr. Harold Morton in the Torrance area? A. Yes, I am.

Q. And what is the initial production from those wells?

A. Which specific wells are you talking about?

Q. Any wells that he drilled. I will withdraw the question. When were these wells drilled in Redondo by Mr. Morton and Lebow & McNee?

A. Commencing in 1941, I believe, is the date.

Q. And when was the last well drilled?

A. I am setting casing in one of them tonight.

(Testimony of John H. Wents, Jr.)

Q. They are still drilling for that production?

A. Yes, and they have continued to drill for them.

Q. Isn't it a fact, Mr. Wents, in the last three or four years individuals and oil companies have drilled wells for tax reasons where they know they will not get back the entire cost of drilling the well?

Mr. Weymann: That is objected to as improper cross-examination. [398]

The Court: The objection is sustained.

Q. By Mr. Dechter: I will ask you if it isn't a fact that there is a particular attraction to buyers of oil royalties that there is an allowance of 27½ per cent for depletion in connection with the payment of income taxes?

A. A royalty buyer probably takes that into consideration.

Q. In other words, that is an advantage that a buyer investing in oil royalties has over other types of investments?

A. Some other types, yes.

Mr. Dechter: I believe that is all.

The Court: That is all, Mr. Wents.

Mr. Weymann: Just one question, Mr. Wents.

Redirect Examination

By Mr. Weyman:

Q. Can you tell us approximately how much money you have expended or authorized or approved the expenditure of for oil well equipment within the past three years?

(Testimony of John H. Wents, Jr.)

Mr. Dechter: To which we object upon the ground it is a compound question; upon the further ground it is incompetent, irrelevant and immaterial. What he may have authorized as a petroleum engineer would have no bearing on his qualifications in handling the purchase of oil well equipment himself.

Mr. Weymann: If he is authorized—— [399]

The Court: It doesn't appear to be redirect examination.

Mr. Weymann: Withdraw the question.

The Court: You are excused. How many more witnesses have you, Mr. Weymann?

Mr. Weymann: I think the plaintiff rests, if the court please.

The Court: Court will take an adjournment at this time until Monday morning at 10:00 o'clock.

A Juror: Monday?

The Court: Who asked that?

The Juror: I did.

The Court: Monday. We will adjourn at this time until Monday morning at 10:00 o'clock, and the jurors will bear in mind the admonitions of the court heretofore given them. Return at that time.

(Whereupon, at 4:20 o'clock p. m., Friday, July 27, 1945, an adjournment was taken until 10:00 o'clock a.m., Monday, July 30, 1945.)

Los Angeles, California,

Monday, July 30, 1945, 10:00 A. M.

The Court: The members of the jury are all present and in their places in the jury box, it is so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: You may proceed.

Mr. Dechter: Your Honor, at this time we again renew our offer of Defendant's Exhibit A, for identification, being the statement of oil and gas and natural gasoline produced from Defense Plant Corporation's Well No. 10 from September 29, 1942, to June, 1945, in evidence, having submitted to your Honor the memorandum of our points and authorities on the question, and we adopt the argument contained in that memo in support of our renewed offer.

Mr. Weymann: At this time, if the court please, I renew my objection on the ground that no proper foundation has been laid for the introduction of it. There is no showing that the condition of the field is the same as that which it was prior to the taking by the United States, and all of the evidence before the court in this case indicates that there has been a substantial change which would change the amount of production from this well.

Mr. Dechter: It is our contention, your Honor, that that would not go to the admissibility, it would go to the weight, [402] and if the evidence was offered the evidence would show there is no

additional expense of any kind that the Defense Plant Corporation had in operating the well than there was before that time.

Mr. Weymann: The question is not expense in the operating of the well, but in the actual production from the well.

The Court: The objection is sustained.

Mr. Dechter: May we note an exception.

Call Mr. Owens.

BEN D. OWENS,

called as a witness by and on behalf of the defendant, in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Ben D. Owens.

Direct Examination

By Mr. Dechter:

Q. Mr. Owens, what is your business?

A. Oil Well abandonment.

Q. And how long have you been so engaged?

A. Since 1923.

Q. And where have you conducted such business?

A. In the south basin of Los Angeles County, Taft, Bakersfield Division.

Q. And have you also abandoned wells in the Del Rey [403] oil field? A. I have.

Q. And are you familiar with the usual and reasonable charge for abandonment of oil wells?

(Testimony of Ben D. Owens.)

A. Yes, I am. [404]

Q. And do you have an opinion as to what the usual and reasonable charge for abandoning an oil well at Del Rey would be about September of 1942?

A. About \$800.00.

The Court: No. He asked if you had an opinion.

Mr. Weymann: I move to strike the answer.

The Court: The answer may go out. Do you have an opinion?

The Witness: Yes.

Q. By Mr. Dechter: And what is your opinion as to the usual and reasonable charge for abandoning an oil well in Del Rey in September of 1942?

Mr. Weymann: Just a moment, please. This is objected to as irrelevant and immaterial. There is no question raised here about the abandonment of a well on September 28, 1942. It is not an issue in this case.

Mr. Dechter: Your Honor, there was some evidence brought out indirectly in Mr. Oliver's opinion as to the cost of abandonment although subsequently your Honor did strike that testimony, but in giving his original valuation he testified that he assumed an abandonment charge of \$2500.00, and it is my opinion also that this goes to the question asked by the Government as to the economical use of the equipment for the well, to show what the equipment was worth, taking into consideration what they could have gotten for it after [405] deducting the abandonment charge.

(Testimony of Ben D. Owens.)

The Court: I think the point Mr. Weymann is making, if the court understands it, and I may misunderstand it, is that while he estimated it as of September 28, 1942, he was reckoning the cost at the time that the well would have to be abandoned by reason of the expiration of the lease, due to the fact that the well was no longer productive.

Now, is that your point?

Mr. Weymann: That is precisely the point, your Honor.

Mr. Dechter: Your Honor, Mr. Oliver couldn't possibly know what the cost of abandonment would be.

The Court: I just mentioned that. If you have anything further to add——

Mr. Dechter: My purpose was to show what the reasonable charge was at the time and what it has been in October of 1943, so that the court and jury can deduce what the cost of abandonment was. In other words, there is quite a difference between \$2500.00 and what we consider the usual and reasonable charge is, and Mr. Oliver testified he never abandoned any wells or had any experience in abandoning wells.

The Court: The objection is overruled. You may answer.

The Witness: What is the question?

The Court: How much would it cost?

The Witness: About \$800.00.

Q. By Mr. Dechter: And in your opinion what

(Testimony of Ben D. Owens.)

would be [406] the usual and reasonable charge for abandoning a well in Del Rey in October of 1943?

A. There wouldn't be any difference.

The Court. No substantial difference?

The Witness: No.

The Court: Mr. Owens, suppose that you were called upon to make an estimate of what the cost of the abandonment of a well in the Playa del Rey field would be at the end of the production; that is, that production being estimated from 8 to 10 years. Could you give an estimate of what that would be at such time? Now, is the court's question clear to you?

The Witness: Well, you mean 10 years from now, your Honor?

The Court: From 1942 or 8 years.

The Witness: I don't think there would be any difference.

The Court: You think, your knowledge of what has been the cost over a period of years and from your estimate of what is likely to occur within the next eight or ten years, that the cost would be substantially the same?

The Witness: I do.

The Court: In other words, you wouldn't have anything better to base it upon than what you know at the present time?

The Witness: That is right. [407]

Q. By Mr. Dechter: Mr. Owens, in abandoning a well, will you state to the court and jury what is

(Testimony of Ben D. Owens.)

the life of the oldest well that you have abandoned and pulled casing from?

A. I have abandoned wells that were drilled in 1908.

Q. And the casing that you pulled from those wells, was it sold as casing for resale for used oil wells, or was it sold as junk?

A. It was sold for casing, re-use in oil wells.

Q. In other words, was that casing in good and workmanlike condition, suitable for re-use in oil wells?

A. Yes, it was.

Mr. Dechter: That is all.

Cross Examination

By Mr. Weymann:

Q. Mr. Owens, the abandonment costs depend on the terms of the lease, do they not?

A. Well, can I answer that the way I wish?

The Court: Well, you may answer it yes or no, and then you may explain your answer.

The Witness: No, they can't.

The Court: Now, you may explain it.

The Witness: What I mean by that is I never see the leases when I go to abandon a well. All I am asked to do is exonerate the bond. [408]

The Court: Well, does that include removing all the material that is reasonably possible of removal?

The Witness: Well, I just abandon wells and pull the pipe out. I don't remove any concrete or fill any sump holes or anything like that. If the company wishes it, why, I take that as the contract as a whole. [409]

(Testimony of Ben D. Owens.)

The Court: That would be additional?

The Witness: Yes.

The Court: Would that be in addition to the \$800.00?

The Witness: That would.

The Court: How much would that run?

The Witness: Anywhere from \$800.00 to \$1,000.00.

The Court: In addition to the original \$800.00?

The Witness: Yes.

Q. By Mr. Weymann: What wells did you abandon in Playa del Rey, Mr. Owens?

A. I abandoned the O. & M.

Q. When was that?

A. That was in 19.. I can't recall the date, I believe it was 1937; and I can't recall the other name of the well there, Hoyt Well No. 8, I believe is what he called it. That is across the highway south of the well in question.

Q. In this estimate of abandonment that you have given you did not include cleaning up the ground, did you?

A. On these two locations I did.

Q. In the estimate of \$800.00 which you have given?

A. No, I didn't do that for the \$800.00.

Q. That covers removing the physical equipment from the well only? A. Yes.

Mr. Weymann: That is all, Mr. Owens. [410]

Mr. Dechter: That is all. Defendant rests, your Honor.

Mr. Weymann: At this time, if the court please, I would like to make a motion to strike certain testimony from the record.

A Juror: Louder, please.

Mr. Weymann: The plaintiff now moves to strike, and requests the court to instruct the jury to disregard all testimony as to the market value, as of October 4, 1943, of any oil or gas production equipment and facilities, which on September 28, 1942, were located on the leasehold property of the defendant and were then by him used in the production of oil and gas from the producing well known as Blocks Well No. 10, located on defendant's sublease in this proceeding.

The motion is based upon the following grounds:

1st. That under defendant's pleadings he demands compensation for an oil and gas sublease with a producing well thereon as a producing unit; that issue was joined and defendant introduced evidence as to value under that state of facts.

2nd. That separate valuations of portions of a single producing unit, to-wit, of the oil and gas sublease of the defendant with a producing well thereon and of the equipment and facilities connected with said well and necessary to produce the same is not permissible under the law.

3rd. That it conclusively appears from the uncontroverted [411] evidence that the oil well producing equipment, as to which the witnesses, Block, Rubin, and Rush, testified on market value as of October 4, 1943, were absolutely necessary to the continued operation of said Block Well No. 10, and

that without said or similar equipment said well would not be a producing oil and gas well, but a mere hole in the ground lined with 5300 feet of 7-inch casing and 306 feet of 5¾-inch liner.

4th. That it further appears from all the testimony introduced by defendant as to the market value of defendant's oil and gas sublease as of September 28, 1942, that this value was predicated upon the continued operation of and production from Blocks Well No. 10, and the continued use of all of defendant's operating and producing facilities and equipment which were in, on or connected with said well on September 28, 1942.

5th. That to permit a valuation of and an award to the defendant for his leasehold estate with the well thereon as an operating property which was capable of producing oil and gas in commercial quantities over a period of years, after the government took possession, by using the equipment and facilities which were connected with and used on the Block Well on September 28, 1942, and to make a separate and additional award for the market value of the same equipment as of October 4, 1943, would result in a duplication of compensation [412] to the defendant in this: that the defendant would receive the full market value of a producing oil and gas well consisting of the potential future recovery of oil and gas through the well, and of the facilities and equipment necessary for such recovery, and a separate and additional award for the same facilities and equipment which were a part of the pro-

ducing well and constituted one of the elements of its value as such.

Mr. Dechter: Your Honor, this is nothing more than a repetition——

The Court: The court is ready to rule, Mr. Dechter.

I think the motion should be denied and it is denied.

Mr. Weymann: May we have an exception, please?

The Court: Yes. I think, Mr. Weymann——

Mr. Weymann: Pardon me?

The Court: I was just going to say the court didn't have the benefit of all that particular objection at the time the objection was made. That is, the motion that you make to strike is in so much more particularity than the objection was made that the court had to rule upon the objection as it was made and based.

In addition to that, I think by granting that motion there is a certain part of the testimony that you would be asking to strike which was elicited by the plaintiff itself. My recollection on that point is just general; it may not be [413] accurate; but in any event the court denies the motion, and you have your exception.

Mr. Weymann: Thank you, sir.

The Court: Any further testimony to be taken?

Mr. Weymann: No further testimony, your Honor.

I now wish to present plaintiff's request for an additional instruction on the form of the verdict.

The Court: May I ask you gentlemen how much time you think it will take you to argue this case?

Mr. Weymann: I think 45 minutes, if the court please.

The Court: How much time would you like to have, Mr. Dechter?

Mr. Dechter: I think about that estimate. Probably an hour, I would say.

The Court: Considering all of the testimony, I think an hour would be reasonable and the court will fix the time for the argument with a limit of one hour to each side. Of course, that doesn't mean that you have to consume that time, but that should be the outside limit, and I think it is reasonable.

As to the time for the argument, the court will have to examine more carefully the instructions and is required to state the instructions it expects to give in advance of the argument, so the court will excuse the jury today and they are ordered to return tomorrow morning at 10:00 o'clock. [414]

During this period in which they are recessed they will bear in mind the admonitions of the court heretofore given them.

And as for you gentlemen, I think I shall be able to advise you regarding the instructions at 3:00 o'clock this afternoon, if you will return at that time.

Mr. Dechter: May I make an inquiry, your Honor?

The Court: Yes.

Mr. Dechter: I presume the defendant will open the argument to the jury?

The Court: That is usually done.

Mr. Dechter: Am I to divide my time so as to leave enough to reply?

The Court: You may do that. Will you gentlemen be available in the event the court needs some help before that time?

Mr. Dechter: I will hold myself ready.

Mr. Weymann: I will keep myself available.

The Court: The jury are now excused until tomorrow morning at 10:00 o'clock. You will bear in mind the admonitions of the court heretofore given you.

Court is now recessed until 3:00 this afternoon.

(Whereupon, at 10:25 o'clock a.m., a recess was taken.) [415]

Los Angeles, California,

Tuesday, July 31, 1945. 10:00 a.m.

The Court: You gentlemen have seen the form of verdict which the court expects to give?

Mr. Weymann: Yes, I have.

The Court: You have no objection to it?

Mr. Weymann: No objection.

The Court: Your only objection is as to the date of September 28, 1942?

Mr. Dechter: That is correct, your Honor, the same as I announced yesterday.

The Court: Yes, and otherwise you agree to it?

Mr. Dechter: As to the form, I have no objection.

The Court: The members of the jury are present and in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Mr. Weymann, pardon me just a moment. After your agreement as to the form of verdict, is it your desire to withdraw your additional instruction?

Mr. Weymann: I withdraw that.

The Court: Very well. The court will just return it to you.

The Court: You may proceed with the argument.

Mr. Weymann: The plaintiff withdraws intended instruction [417] 16-A.

Mr. Dechter: Your Honor, may I ask permission that the Exhibit C of the amended complaint be available to the jury for the purpose of their seeing what the inventory consists of?

The Court: Well, I think it was referred to in the evidence without any objection, and I can see no objection to the jury's having it now.

Mr. Weymann: No objection.

Mr. Dechter: Thank you.

Lady and gentlemen of the jury, first let me thank you for your patience and kind consideration of this case. I don't believe this case is too complicated. There is only one issue and that is, what is the defendant, Sam Block, entitled to receive because the government saw fit on September 28, 1942, to take away from him a producing oil well together with the machinery, equipment and fixtures necessary to operate that well, and took away

in addition a 10 7/12 per cent sublessor's or overriding royalty. The government felt that it was necessary to have this property for a gas reservoir and took this other property as shown on the map which has been offered in evidence.

Now, fortunately in this country we have a provision in our Federal Constitution and in the State's Constitution we have a similar provision that where the government elects to take away property belonging to an individual, it must as a [418] condition make fair and just compensation to that individual, and those words, fair and just, have been used by our Constitution over and over again.

Now, in attempting to arrive at some definition of fair and just compensation, they have also used the term "fair market value." Fair market value ordinarily is what a person who is interested in making or purchasing an investment would give and what a seller who is willing to dispose of his investment would take. [419]

Ordinarily, fair market value is easy to arrive at where there are sales and purchases or a constant market, and in testing the opinions of expert witnesses on values like on commodities, like on wheat or real estate, you have readily available to you the sales in the particular neighborhood, you have available to you what people are asking and what people are receiving; but sometimes it happens, even in the case of real estate; that there are no sales and there are no purchases and property isn't on the market, and the courts have said in those kinds of cases that you arrive at what is an

informal estimate or even an informal guess. In other words, you get all the information that is available and from that information you try to arrive at what the market value would be if there had been a market.

Now, in this particular case we have a peculiar kind of property. It is a property which consists of taking out something from the ground. It is similar to crops to be used in the future, only instead of having to plant those crops the product is already there.

In arriving at market value a purchaser and seller naturally takes into consideration the conditions of the market, the value of the money. Now, for example, it is a simple matter to know that during the '30's the price of commodities and real estate would have been entirely different from what they are at the present time. Likewise, money commanded a much [420] larger purchasing power and commanded a higher interest rate than it does at the present time. Now, those are things that a buyer and seller take into consideration. A buyer takes into consideration how much his money will earn him, how much more will it earn him by making an investment; the seller takes into consideration what will I do with the money? What will the money get me if I sell this piece of property?

We all know that lately, and particularly since the war, everybody has believed and felt that we are in a period of inflation, and people have sought to hedge against inflation. That is indicated by the fact the banks are crowded with money, and

people who own that money are trying to find a place to put it. Why? Because whereas five years ago you could have bought three bunches of carrots for a dime you know what you have to pay for them now. That is the best indication of what the value of the dollar was five years ago and is now. So people are trying to transplant their dollars into something so if the dollar gets cheapened their commodity will rise in proportion.

Now, the best hedge against inflation is buying commodities. One difficulty and one great problem in buying a commodity like wheat, supposing you bought wheat in July for delivery in December, and you expected wheat to go up by December but it didn't go up, well, you have to take that wheat in December, you have to put it in a warehouse, you have to pay warehouse [421] charges. With oil you don't have to do that. That oil is in the ground, you have a permanent warehouse there, and you take it out gradually and you get what the market value of the dollar is over the period of the life of the well.

Buyers have taken that into consideration, and they feel oil is one of the best hedges against inflation.

Now, you have here a conflict of testimony between the witnesses. You have the testimony of Mr. Block that the value of the leasehold to him is \$35,000.00. Now, he is not a lawyer and he doesn't know that that doesn't constitute market value. It must be the value to both a buyer and a seller; not just to him alone. But he is sincere in his belief

because he feels that at the rate of 25 barrels a day he would get more than that over a period of 10 years. He hasn't taken into consideration shut-down time, but he feels that when the well is shut down the oil is still there, and when the well is again put on production he gets that oil out. We have his testimony as to the personal property, that it is worth \$22,000.00.

Now, an owner has a right to give his testimony as to value, even though he hasn't had experience. But in this particular case Mr. Block has been in the oil well equipment business for a long time, and it appears from his testimony, the testimony of Mr. Rubin, the testimony of Mr. Rush, that there was practically no new equipment available at or about [422] the time the government took this well over, and, therefore, second-hand or used equipment commanded a very high price. And we have the uncontradicted testimony of Mr. Rubin that the O.P.A. ceiling price was about 15 per cent below that of the new price.

Now, we have Mr. Rubin's testimony, an unbiased witness, a man who has been in this business since 1928, that the property described on the inventory plus two additional tanks, which the government inadvertently left off the inventory, and which Mr. Weymann stipulated was on the property when the government took it over, was worth \$22,000.00.

Mr. Rush, a man who has been in business for himself for approximately 12 years, I believe he testified, prior to that time was with the General Petroleum Corporation for, I think he testified, 17

or 18 years doing the same thing, buying and selling used equipment, testified that the property described on the inventory was worth \$18,000.00, but he did not include the tanks because the tanks were not on the inventory.

Mr. Rubin and Mr. Block both testified that those two tanks were worth \$750.00 apiece or \$1500.00.

Now, we have the testimony of Mr. Crown. Mr. Crown, an engineer who was with the State of California for 16 years, I believe his testimony was, gave a valuation which I think was ultra-conservative. He testified that the value of the leasehold interest, eliminating any consideration of the [423] personal property or equipment, was \$11,000.00; that the value of the overriding royalty interest was \$3120.00. [424]

Now, we have that testimony on one side. Then, we have the testimony of the State's or the government's experts. Mr. Wents testified that the leasehold interest is worth \$2700.00.

Mr. Oliver testified that the leasehold interest is worth \$3150.00. Did they take into consideration what the production had been for 21 months prior? No. Did they take into consideration the fact that the price had already changed from 80 cents to 94 cents a barrel? No, although they knew it had changed, although Mr. Oliver knew that for years the oil industry had been clamoring that the price of crude was too low, considering the cost of producing oil, although he knew we were in a period of inflation.

Now, I think it is interesting, lady and gentle-

men, to see just what the production of this particular well was for two years prior to the time that the government took it over. Isn't that a reasonable thing that a buyer would inquire into if he were buying an apartment house or if he were buying a going business? Isn't that the natural thing that you want to know, what you are going to make from it? How much more should that be true in the case of an oil well where you are relying on the production you get from the well?

Now, I shall take these figures, and with the court's permission, I would like to put these figures on the blackboard to show proof of what the production for the two previous years was. In using these figures I have taken the government's [425] own exhibit which is Plaintiff's Exhibit 8 and which exhibit I believe the court will hand you for your examination. I don't presume, your Honor, there will be any objection?

The Court: If the jury desires to have the exhibits, they are entitled to them.

Mr. Dechter: Very well. Now, in this Plaintiff's Exhibit 8, which is the summary of the actual production by months of the Block's Oil Company Colly No. 10 well, if we start with October, 1940, and go to September, 1942, which would be two years prior to the time that the government took it over, we find these figures: October, 860 barrels. November, 687 barrels. December, 570 barrels. That makes a total of 2117 barrels. Production for the year 1941 is 6614 barrels. For January, 1942,

to September, 1942, we have 4913 barrels. That adds up to 13,644 barrels.

Now, if we take the valuation of Mr. Oliver of 80 cents a barrel, we get \$10,915.20. Now, that is 100 per cent of the production. Now, Mr. Block's leasehold interest is only 70 per cent, so we take 70 per cent of \$10,915.20 and that amounts to \$7,640.64.

Now, Mr. Block testified that the normal cost for operating the well was \$50.00 a month. The government's witness, Mr. Wents, testified that it was \$100.00 a month, plus 15 per cent of the production or approximately \$1380.00 a year. We have got two years here, so we take off two years' operating [426] expense, according to the government's own witness, which would be \$2760.00. That leaves \$4880.00. That, lady and gentlemen, is what Mr. Block or anybody owning that well would have received for two years prior to the date the government took it over, which Mr. Oliver and Mr. Wents want you to believe was worth only \$2700.00 from Mr. Wents' standpoint, and \$3150.00 from Mr. Oliver's standpoint.

Now, so far as the 10 $\frac{7}{12}$ per cent interest is concerned, that is gross overriding or sublessor's interest, and if we take 10 $\frac{7}{12}$ per cent of \$10,915.20, that would be \$1155. That is what the 10 $\frac{7}{12}$ per cent would have earned for the two years previous to September of 1942 that both Mr. Oliver and Mr. Wents say was worth approximately \$131.00.

Now, in addition, to illustrate how zealous the

government's witnesses were to make a showing for a very wonderful client, the government, who undoubtedly will have a lot of business for them, Mr. Oliver knew that the production for the year of 1942 was 7255 barrels, but in his estimate of what the production would be for 1942, he put 6400 barrels, a difference of 855 barrels. Now, in these cases these experts are trying to give you what is supposed to be a reasonable estimate of what the well would do.

Now, where they had a chance of checking their estimate and they knew their estimate was deficient, did they make any attempt to correct it? No. [427] In the year 1943—incidentally, Mr. Wents only estimated 1942 production at 6133 barrels although in June, 1945, he knew that the production for 1942 was 7255 barrels. They estimated, Mr. Oliver estimated the production for 1943 at 5800 barrels. Yet, they had six months' production for 1943 which showed 4124 barrels, in other words almost practically more than 80 per cent in the first six months of what they estimated for the full year.

Now, another thing, they give an option, Mr. Oliver, for example, that the well and the equipment is worth \$5650.00. In other words, he gives a valuation of \$2600.00 for the equipment. Now, lady and gentlemen, you will all remember that when his Honor asked Mr. Oliver could he give the fair market value of this equipment on September of 1942 he said no, he couldn't give that valuation.

Mr. Wents, when he was asked the same question,

said he didn't figure it that way. He figured what the salvage value would be 10 years from now.

Now, the government is taking over a going well. They wanted a going well. They could have condemned just the land alone and said to Mr. Block, "We don't want your personal property and equipment. You can take that off." But, they wanted a going oil well and you can't have a going well unless you have all this personal equipment, and they wanted it installed so as to use for an oil well and that, lady and gentlemen, is the value that you have to put on. What would [428] it have cost on September 28, 1942, to replace that equipment and install for use to operate this oil well?

Now, you have the testimony of three men, two of them unbiased, all of whom have been in this business of buying and selling equipment, not like Mr. Wents or Mr. Oliver whose experience has been like most of us in buying clothing or buying shoes, or even if you are in the business of buying something once in a while, and then they don't have that experience directly. It is merely that they recommend as an engineer, and we all know that most of these people have purchasing agents or do the business themselves. Now, some of them could testify as to any purchases that they made, going down and shopping, but even so, they admit they aren't in the business. [429]

Now, here is equipment worth \$22,000.00 according to Mr. Rubin and Mr. Block; worth \$19,500.00 according to Mr. Rush, if you take his testimony of \$18,000.00 and add \$1,500.00 for the tanks; and

they want you to believe that the value of the well and the equipment is \$5,650.00. It would have been much better for Mr. Block to forget about the oil well and move his equipment off and sell it, because according to Mr. Rubin he would have gotten the new prices for it less 15 per cent, and there is no contradiction of that testimony.

Now, is it logical to assume that a person would continue to operate an oil well and leave an investment of \$22,000.00 or \$19,500.00, whichever you want to use, for 10 years, when at the end of 10 years he won't even get but a small fraction of that investment back? That is forgetting about the fact that it cost a tremendous sum of money to drill this well originally. Even Mr. Oliver testified that the replacement value on September 28, 1942, would have been \$19,800.00, or approximately close to \$20,000.00, but he qualified that by saying "new." We will take off 15 per cent, because it was used, because he himself admitted, and so did our witnesses, that new equipment wasn't available, that major oil companies who always buy new were forced to buy used because there was no new equipment available. Is it logical to assume that a person would leave, even according to Mr. Oliver, \$19,800.00 worth of equipment on a well for ten years to get back \$5600.00? [430]

We have the testimony that all it would have cost Mr. Block to abandon the well in 1942 and to clean up the premises would have been \$800.00 for abandoning the well and another \$800.00 or \$1,000.00 for cleaning up the premises. That is, like filling up the

sumps where the oil is stored, knocking out cement and making the premises the way they were originally.

Incidentally, Mr. Wents, who is not, in my opinion, qualified as an expert, was asked, however, on cross examination about only four items, I believe it is, and they appear on page 4 of the inventory. Yes, four items. Let me amend that. Four items which appear on page 4 and the derrick which appears on page 3. And those items according to his figures come to \$13,622.00, those items alone. In other words, he testified six cents a foot for 4950 feet of three-quarter inch sucker rods, seven cents a foot for 1500 feet of seven-eighths-inch sucker rods, 25 cents a foot for 6487 feet of tubing, \$1.25 for seven-inch casing and \$3400.00 for the derrick. And when you examine the inventory, you find in addition the inventory consists of pumping equipment, engines and numerous other items.

Now, another point. Mr. Oliver was questioned about this discount factor, and I think it is simple knowledge when you discount money that you receive on a future date down to the present date, that by that is meant the same thing as the insurance companies do when they discount annuity rates and [431] things of that kind; they figure what according to the prevailing rate of interest it would take for one dollar today to amount to so much in 10 years. Mr. Oliver apparently found it difficult to say yes or no to a question asked by me, so he had to argue. He said no, it wasn't exactly the money rate. In other words, he realized, apparently, that

an eight per cent discount factor was not at all the usual rate prevailing in September of 1942. You members of the jury know what you received for your money in the bank; you know what you receive when you try to make an investment, and you all know that four per cent would be a liberal rate at the present time. In other words, whereas in the '30s real estate loans were made on a seven or eight per cent basis, you can get any building and loan association or any bank or insurance company to make them on the basis of four per cent at the present time. So he has to explain that, and he says, "Well, I took into consideration the hazard involved." Well, that would be fine, that would be a logical explanation if he adds to the prevailing rate of four per cent another four per cent for a possible hazard. But does he stop there? No. On top of that, after he gets through discounting eight per cent compounded annually, he takes off approximately 37 per cent in addition from the amount that remains. In other words, to give you an illustration, let's take the leasehold estate. He says the value of the leasehold estate after discounting [432] the eight per cent compounded annually is \$4980, but he says the fair market value is \$3150.00, or he takes off an additional \$1830.00, which amounts to approximately 37 and a fraction per cent. Now, he does the same thing with the overriding royalty interest, which the $13\frac{1}{3}$ per cent, he says, after using the discount factor of eight per cent compounded annually amounts to \$2760.00; he takes off \$1750.00, which amounts to approximately $36\frac{1}{2}$ per cent.

Now, you can't blow hot and cold. Either one thing is a discount factor and the other thing is a hazard. But what does he do? If you take the difference between four per cent and eight per cent and compound it annually for a period of eight years, as he did, it would amount to 37 per cent or more over the period of eight years. So, in other words, he is deducting approximately $37\frac{1}{2}$ per cent twice when he uses the eight per cent factor, when you take into consideration the prevailing money rate.

Now, they say they take into consideration the hazard involved. Now, there is nothing in this world that doesn't involve a hazard. Money in the bank is lost because a bank fails; a person has a building like the Empire State Building and along comes a bomber and destroys two stories of it. Nobody ever expected anything like that would happen. In other words, there are hazards which are unexpected, but which a purchaser or investor considers so extraordinary that he [433] doesn't take them into consideration.

For example, the railways during the '20s and '30s bought railroad bonds, paid par, and they are supposed to pay four and five per cent per annum; but during the '30s you could have bought them for from 15 to 30 dollars on the thousand, so you would have gotten something like 20 per cent interest on your money. But now they are back to par and above par and you can only get approximately three or four per cent on second-grade railroad bonds, which goes to show that even railroads with all their

investment counsel sometimes can't foresee everything that takes place, but they take what is a normal as a guide. Nowadays persons who buy royalties and buy oil rights buy it principally as a hedge against inflation.

For example, in a leading textbook on appraisal by Paul Paine he says, at page 164:

"During the recent years many of the largest transactions in royalty interests have grown out of buyers' quests for hedges against the adverse effects of inflation. This type of buyer is not concerned with an early payout and early earning, but is much occupied with the estimate of recoverable oil in the ground."

Now, another thing I asked Mr. Oliver was did he take into consideration possible increases in production. No. [434] But he did admit there were methods of increasing the production; he did admit the efficiency of operating oil wells has increased.

And in another book by Dorsey Hager, *Fundamentals of the Petroleum Industry*, published by McGraw-Hill Book Company in 1939, at page 399 the author says:

"A good royalty comprises the following speculative features above its safety in yield:

"1. There is a chance of a rise in oil prices.

"2. There is a chance of higher oil recovery than the original estimate because of engineering efficiency in future years.

"3. There is in many oil fields the possibility of deeper pay zones which when tapped may more than double the value of the royalty."

Now, certainly, it seems to me, that a buyer in the oil business would certainly take into consideration that sooner or later the price of oil was going to be raised. All he has to go by is to go by past experience. In the last war oil went to \$4.00 a barrel. Nowadays we have hearings in Congress in which they ask Congress to force the OPA to lift its ceilings so as to increase the price of crude oil.

Mr. Oliver knows about those things. He knows about all these articles, yet he doesn't take that into consideration.

Now, let's take the stocks of the guilt edge oil companies [435] like Standard Oil of California, Standard Oil of New Jersey, why, when they show an annual income of three or four dollars a share a year it is supposed to be phenomenal, and their shares sell for around \$40.00, \$50.00 a share, and Standard Oil when it pays a dividend of \$2.00 a share, as it has up until about a year ago when it, I think, increased it to \$3.00 a share, people thought that was a pretty good dividend on that stock.

In other words, oil companies, if they figure on getting 10 per cent return, gross return on their money, they think it is a pretty good return.

Now, let me ask you this question: Do you ever hear of a major oil company or a large oil company ever selling production? The only time you ever hear of that is when they go into bankruptcy or into receivership. Oil companies, as a rule, keep their wells and operate them until they get the last drop of oil out of them.

Lately there has been a seller's market in every-

thing, not alone oil; in real estate, in any kind of commodity. It is the seller who lays down the price and the buyer can take it or leave it. And you can remember only four or five years ago when real estate went begging. Now, that is particularly true in the oil industry.

At the opening of this trial the court asked both sides to stipulate that instead of waiting on cross examination the [436] parties' experts could give testimony as to sales or offers on direct examination, and we both stipulated. Mr. Oliver and Mr. Wentz never sold or bought a well in del Rey. They never gave any evidence of any particular sales or particular purchases. And I think you can draw the inference from that that it was impossible for them to do it because the only time a sale takes place is when a company goes bankrupt, a person dies and they have to pay inheritance taxes, or some other emergency comes along, because people who buy oil property buy them with the idea of getting their money back gradually over a period of years.

And, talking about taxes, here is another advantage that an oil buyer considers, and that is when he buys an oil royalty, when he buys an oil property, 27½ per cent of the income from the property is not subject to income taxes. That is an allowance that is made by the government for what is called depletion, and it is an arbitrary allowance. Naturally, to purchasers of oil properties—and most purchasers of oil properties are in the heavy tax bracket—that means a lot to them that 27½ per cent of that income is not going to be subject to 60 or 70

per cent income tax rate. The government's witnesses gave that no consideration at all.

Now, it is my contention that the opinions of the government's witnesses were so low and so unreasonable that you members of the jury would have the right to disregard the [437] same entirely.

Another thing I want to call to your attention is that on this curve that Mr. Oliver drew, you have noticed from about January of 1940 down to July of 1943 that there wasn't much fluctuation, and if you take Plaintiff's Exhibit 8 and examine it, as I hope you will all do, you will find that the production was fairly steady during that period, that there were some months that were a little bit higher than others, and Mr. Oliver admitted that that might be due to the fact that there was a shutdown because maybe a joint of pipe had to be repaired, maybe a valve had to be taken out and put back; and nowadays when that is done you want to shut down more than usual because it is just as difficult to find replacements on that type of oil well equipment as some of you members of the jury have found in finding replacement parts for your cars. [438]

I would like the privilege, your Honor, of having the balance of my time to reply. Thank you.

The Court: Mr. Weymann, I think the court will take a very short recess at this time. The members of the jury will bear in mind the admonitions of the court. Return when called by the bailiff.

(A short recess was taken.)

The Court: The jurors are all in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Proceed, Mr. Weymann.

Mr. Weymann: May it please the court, lady and gentlemen of the jury, Mr. Dechter, Mr. Dechter as an experienced oil attorney has presented, I am sure, the claim of Mr. Block in the most favorable possible light to his client. That is his right. That is his obligation. Mr. Dechter's obligation is to Mr. Block, his client, to endeavor to secure for him a verdict as high as possible as my obligation is to the government of the United States and through it to the people of the United States.

We are sometimes prone to think of the government as a distant, impersonal entity so that we are apt to forget that the government after all is nothing more or less than an agency through which the people transact their common affairs and do [439] their common business.

In arriving at a verdict in condemnation suit, I think a jury has as difficult a task as it has in any possible case in which it is called upon to sit, for this reason. In the ordinary case the question presented to you usually is did he or didn't he, or how much? But, in this case, you have to ascertain a state of mind, not a state of mind now, but a state of mind as of the date which the court will give you in its instructions. That is to say, you have to place yourselves in the state of mind or in the position of a willing seller and a willing buyer as of September of 1942 who are informed of all of the facts favorable and unfavorable which you conclude

the evidence in this case has disclosed, and then determine what those two people, exercising intelligent judgment, would determine they would agree upon.

Now, Mr. Dechter has put some figures on the board. I am glad he did that, for this reason. He took 24 months of production prior to the time the government took the property. He took from the exhibit the cost of production and then deducted \$50.00 a month. Why did he deduct \$50.00 a month? Under examination by Mr. Dechter of Mr. Block, he was asked what is the cost of production per month, and Mr. Block's answer was \$200.00 a month. Now, why didn't Mr. Dechter tell you that? Did he think perhaps you had forgotten the evidence? It is here in the record. Now, use \$200.00 a month, [440] the figures given by Mr. Block, and apply it to that illustration and see where you get.

Let us take the testimony of Mr. Block. In his opinion the value of his leasehold estate without the necessary equipment to operate the oil well was \$35,000.00, the value of his overriding royalty was \$6,000.00, and his estimate of the value of the equipment \$22,000.00. How did he arrive at that? He arrived at it by estimating a life of 10 years of 365 days each and arrived at 3,650. Can you imagine an oil well operating 3,650 consecutive days? And he estimated it at 25 barrels a day, although the estimate was that in September of 1942 he was actually receiving less than 17 barrels a day, 436 barrels to be exact in September of 1942.

When the court asked him how he was to get that oil out of the ground, he said he had the equipment,

the equipment was there, that he intended to use that same equipment to get that oil out of the ground. He was asked whether the well was making water. Oh, he didn't keep track of the water, but it was making water all right, and the more water you raise in proportion to the oil, the more it would cost. Then, he estimated for the return, his operating profit, at the rate of 94 cents a barrel, although for a number of months at that time he was only receiving 75 cents a barrel.

He was asked whether he had the records of the production of that well. He said, "Well, I was asking my man and he said [441] he lost them." Well, I am unable to understand how a shrewd businessman like Mr. Block, who can meticulously calculate his estimate of the value of that well down to \$60,032.50, who arrives at such close figures, is so apparently careless about an important matter such as his records. Perhaps you can understand why.

Put yourselves in the position of a purchaser informed of all the facts and suppose a man comes to you and says, "I have a producing oil well which in September of 1942 in the last month produced 436 barrels of water. I have to shut the well down sometimes twice a year to change the rods and tubing. They break. I have repairs and so forth. I estimate that that well would produce 25 barrels a day for 10 years from now on, and I want \$35,000.00 for it. Now, it is true, of course, that my engineer estimates total income I will get in those 10 years is only \$14,000.00, but I want \$35,000.00

for it, and I have the equipment to produce that well out of which you may recover that \$35,000.00 with profit.

“So, if you can keep that well going on production and you are lucky, and you want to take the gamble, keep it going for 10 years at 365 days a year if it produces that long, I will let you have it for \$35,000.00, but you will have to use the equipment in order to get that. So, I will sell you that equipment for \$22,400.00 and you will have an investment of about \$57,000.00 out of which my engineer estimates you can recover a maximum of \$14,000.00.

What would you say as an intelligent buyer using intelligent judgment?

To give you an illustration also, suppose I would come to you and say, “I have an automobile that I want to sell you.”

You would say, “How much do you want for it?”

I would say, “I want \$2,000.00 for it.”

“Does it run?”

“Well, it will run for 10 years. It has got an engine in it to make it run.”

“Well, \$2,000.00”——

“Oh, yes, but in addition, that engine is in there. That is my engine, too. So, you pay me \$2,000.00 for the automobile and you pay me—\$1,000.00 for the engine necessary to operate it.”

What would you say to a deal of that kind? That is the proposition that Mr. Dechter is advancing in behalf of Mr. Block here. Mr. Block is in the

position of a man who wants to have his cake and eat it, too, with lots of icing on it.

Then, to support his contention of \$22,000.00 for the value of that equipment, he brings in Mr. Rubin. You have seen Mr. Rubin. You have heard him testify. You can judge as to the value of his testimony. By a strange coincidence his valuation of that equipment is just the same as Mr. Block's. [443] How did you arrive at it? He was shown a copy of the inventory. He looked it over and then estimated that the value of that equipment was \$22,000.00. He didn't go down and examine it. He didn't go down and look at it. He looked at the inventory and arrived at the same conclusion that Mr. Block did. I think you will agree that his testimony as to that value has about the same worth as that of Mr. Block.

I am not criticizing Mr. Block for wanting all he can get. That is his right. We come now to Mr. Rush. Mr. Dechter, in his argument, mentioned \$18,000.00 or \$19,000.00 to you as Mr. Rush's testimony, but when he was asked how much of that equipment could actually be recovered, how much of it could actually be sold, it was found that there were some 5300 feet of casing in the hole which would have to stay there, and some 306 feet of liner which would have to stay there, and after reducing that, he arrived at a valuation of \$12,260.00, not \$18,000.00. Why didn't Mr. Dechter tell you that?

But, taking this \$12,260.00 and assuming that a

buyer would take that into consideration, that would mean and remembering that Mr. Rush testified that the well could not operate without that equipment which he valued at \$12,260.00, in other words, if you hadn't any equipment, you might have plenty of oil in the ground, but if you couldn't get the oil out, it would be just like an oil lease on the moon. Oil in the ground [444] isn't worth a dollar until you get it out as far as sales is concerned.

But take this \$12,260.00. That means that if anybody bought that well, and assuming that that valuation was correct, in order to get \$13,494.00 which Mr. Crown estimates is the ultimate recovery, and he is a petroleum engineer, over a course of 10 years, in addition to \$12,260.00, the purchaser would have to make an investment of \$11,000.00 which is the value of the lease. That amounts to an investment of over \$23,000.00.

I think you will agree that no one exercising intelligent judgment would make an investment of \$23,000.00 in order to get back over the course of 10 years \$14,000.00 in addition to whatever he might be able to sell the equipment for for salvage at the end of that period.

If a man must go into the oil business, he can buy many good oil stocks. He would not put his eggs in one basket and run all the risks and hazards incidental to the operation of a single oil well when if anything happened to it, the hazards of the tubing or the rod breaking, getting stuck in the hole and you can't get it out, that would end your

oil well and that would be the end of your investment.

Putting together the estimates of these two witnesses, Mr. Rush and Mr. Crown, of whose sincerity I haven't any doubt, you find you have got a \$23,000.00 investment. Now, it is [445] utterly fantastic that an estimate of \$23,000.00 to get back \$14,000.00 is good business. Either Mr. Rush's estimate is way off or Mr. Crown's estimate is way off, or more probably both of them. It just doesn't add up. That is the long and the short of it.

Let us go to Mr. Crown. Mr. Crown had one year of experience in advising private clients as to values. He had two of them for a year, two more for somewhat less than a year, and one for a period of a couple months. I hope that his clientele will increase. During that year he made one appraisal and his client refused to buy some property on the strength of that appraisal. Whether his judgment was good or not, we will probably never know.

Mr. Crown made a number of errors of omission and commission in arriving at his estimate which I want to point out to you, and in all fairness I think they may be attributed almost entirely to the lack of business judgment and experience which comes only from long experience in that line, of course, which Mr. Crown obviously has not had.

On his purely technical engineering estimate of the amount of oil to be ultimately recovered, he comes very close to Mr. Oliver's estimate. Mr. Crown says the ultimate recovery in 10 years for 100 per cent of the interest was 40,300 barrels. Mr.

Oliver puts it at 37,900.00 for eight years. So far as the technical engineering features are [446] concerned, Mr. Crown's estimate is all right, but when it comes to exercising judgment as to the value of that, when it comes to ascertaining the facts which go into the value of that, Mr. Crown is somewhat deficient. For example, he assumed that the price of oil for the entire 10 years would be 94 cents a barrel although as a matter of fact for six months of that 10 years it was only 75 cents a barrel.

Now, much has been said here about the increased price of oil, about oil increasing in value. War conditions have something to do with that and I doubt if anybody either now or in 1942 expected the war to reasonably continue for the entire period of 10 years. Production has been stimulated and increased and we may reasonably assume or take into consideration at least after the war ceases just what an intelligent buyer would take into consideration. What is going to become of all of this tremendous stipulated and increased production of oil after the war demands cease, to which Mr. Oliver referred in his cross examination? As our Supreme Court said "War earnings certainly cannot form a sound basis upon which to forecast the value of an enterprise."

But, Mr. Crown goes right through at 94 cents a barrel for 10 years and assumes it is going up and up. Mr. Dechter said that after the last war oil sold at \$4.00 a barrel. Mr. Oliver testified \$3.50 a barrel, but let us take \$4.00 a barrel. [447]

Suppose a man bought it on the strength of \$4.00

a barrel. Would he have exercised good judgment? Hardly, because it subsequently declined to 90 cents a barrel and here to 75 cents a barrel. All those things a prospective buyer would take into consideration. The temporary increase and the inevitable decline that follows. He didn't take into consideration the water content of the fluid raised.

The diagram that was introduced into evidence here, I am going to ask you to take that and consider it and note the constant climb of the water content of the fluid and the progressive decrease of the oil content and carry those lines out as an intelligent buyer would and determine what would be the ultimate fate of that. Mr. Oliver drew a diagram on the board showing how water incursion gradually kills out a well so that the well goes to water and has to be abandoned. You have the constantly rising water production there. Would a prospective buyer take that into consideration? Is that one of the hazards?

Mr. Crown didn't take it into consideration in making his estimate of market value. He was asked if there was a pipeline charge for piping the oil to the purchaser's refinery. Well, he said he didn't know just how they would handle that. I am quoting from the record. He said, "If they had to pay a trucking charge, why it might have been taken off the price of the crude. It would lower the price of the crude." He didn't [448] know if there was a trucking charge. He didn't know if there was a pipeline charge. He didn't take it into consideration. All of this is evidence of his lack of experi-

ence which would enable him to form an intelligent judgment as to the value of that property, something that a buyer would want to know on the date that this hypothetical purchase and sale was made.

Now, here comes the most amazing thing of all. He was asked if he had any record of the gas production for which three cents was added to the price. He said he didn't. He had only the value of the gas and gasoline equivalent per barrel of oil which was furnished by Mr. Block, and he based his estimate on the information given to him by Mr. Block,—Mr. Block, whose man had lost his records, by the way, and they couldn't be found, again evidence of inexperience because an engineer in estimating value would be like a bank examiner coming into a bank, or a public accountant, to examine the records of the business to determine how you stand, and would go into the records. He wouldn't ask you, "Well, how many bills payable have you? How many receivables have you?" He would go and make an investigation. He wouldn't depend on you. That is what Mr. Crown did.

When he was asked if he knew of any instance where anybody would pay approximately \$11,000.00 which is his value of the oil lease for an oil property out of which in the course of 10 years he could recover approximately \$14,000.00, which was [449] his estimate of the ultimate recovery, or a little bit less than that, he said he couldn't give you any specific examples, but such people exist. Well, maybe so, but I doubt very much if they are allowed at

liberty unaccompanied, and their families usually have guardians appointed for their estates, in an instance of that kind.

When I asked him whether in his opinion an informed buyer would be willing to pay \$3,120.00 cash in order to receive \$3,971.00 over a period of 10 years from royalties in the Playa del Rey field, which are his estimates of the ultimate receipts by the royalty holder and his estimate of the cash value of that, do you remember what his answer was? I want to recall it to you. "Would a purchaser, an informed purchaser pay \$3,120 cash in order to receive \$3,971.00?"

"That question, I would answer no." A perfectly frank answer. Of course he would not. [450]

There you have the testimony of the defendant's witnesses as to value. One of them repudiates a portion of his testimony as to value; the other added together to make a producing oil well present an impossible situation of taking \$23,000.00 for \$14,000.00 of recovery, including all of the hazards.

Much has been said about the government's witnesses attempting to minimize these prices, these returns. Oliver estimated the total future production at 39,700 barrels. He put the value of that future production, the market value, considering all of the hazards, at \$3,150.00, and adding the value which could be realized off the equipment to produce that \$3,150.00 at the abandonment of the well gave you a total value of \$5,650.00 for the operating interest. He used the same engineering method

which Mr. Crown used but didn't have the judgment to apply, but which Mr. Wents used and then arrived at a fair market value for the overriding royalty of \$1,750.00.

Mr. Dechter mentioned something about the discount factor he used, and why he reduced that to this apparently low figure of \$1,750.00. Because he considered that an intelligent buyer would consider the risk which Mr. Dechter brought out in his cross examination that a well may be on production producing a large quantity of oil and it may happen that the operator may pull the tubing for reconditioning, have a strand stuck in the hole which he is unable to get out. He was asked whether that frequently happens, by Mr. Dechter, and he said he thought that was right. All of those hazards.

Now, to compare the hazards of losing an oil well, all of your eggs in one basket, the mechanical difficulties, the fluctuations in the price of oil up and down, with a return from a mortgage or from real estate, seems to me the height of the fantastic.

Talk was made of a buyer's market. Was there a buyer's market in September, 1942? There is a buyer's market now. Or, rather, seller's market now. But we all know that those conditions change radically after the abnormal conditions in which we live change. We know the depression that followed the boom of the last war. Many people expect the same thing after this war. Let's hope it doesn't eventuate. But an intelligent buyer takes those factors into consideration. In other words, an intelligent buyer takes every adverse factor of the prop-

erty into consideration and hedges against that. He is not going to take that risk unless his profit is sufficiently large. He lets the seller take that risk.

Coming now to Mr. Wents. I feel sure you were impressed not only with the sincerity, but with the comprehensive grasp that Mr. Wents had of his subject. That was amply demonstrated to you, I think, by the kind assistance of Mr. Dechter on his cross examination. He showed a detailed knowledge of what he was talking about, which even exceeded that which I [452] anticipated he would show. He used the same engineering approach that the other two engineers used. It was the custom and the standard by which engineers valued property and gave their advice to clients on which the clients relied to buy and sell. He arrived at an opinion of the market value of the royalty at \$1168.00 compared to Mr. Oliver's of \$1388.00. He valued the 70 per cent operator's interest at \$5690.00, compared to Mr. Oliver's valuation of \$5650.00, making a total difference of less than \$300.00 in their total valuations.

Now, did they get together to connive at this, to reduce Mr. Block's valuation? You have got to reach a determination as to where the truth lies between these widely divergent opinions as to value, and to reach that determination you have to bring to bear not only a consideration of the evidence which you believe, but your common knowledge of the ordinary affairs of life and your knowledge of human nature and motivation. Men do not exaggerate or distort facts through sheer and deliberate

falsification nearly as often as they do through conscious or unconscious bias.

You know very well that we all find it easy to believe or compel ourselves to believe the things that we like to believe because they serve our self-interest and we find it very difficult to believe those things which are obviously true but which we don't wish to be true. [453]

Now, in determining where that unconscious or conscious bias, as the case may be, if such exists, is, ask yourself this question: Who has the most to gain or to lose by exaggerating or minimizing those factors which enter into the value of this property? Is it the government's engineers? They have been engineers giving valuations to corporations and to banks and to oil operators for 15, 20 years, and their employment by the government will very soon be over, but they will go on having their reputations to sustain. Have they any incentive for a fee to distort or pervert the facts? Do you suppose, will you assume that your government by any connivance or device will seek to deprive Mr. Block of a few thousand dollars which justly should come to him? I don't believe you are going to conclude that. I don't believe you are going to conclude that the government's witnesses have expressed anything but their honest opinions based upon long experience and upon sound judgment. It doesn't make any difference to them whether Mr. Block gets \$5,000.00 or \$5,000.000.00, except that they are part of the general public, of course.

When this case is given to you by the court you will in effect be handed a blank check on the United States Treasury, which you will fill out by your verdict and determine the just amount that Mr. Block is to receive. Determine it by what you think a willing seller and a willing buyer, knowing all of [454] the facts which were brought out here would arrive at in a fair deal. I have the right to ask you to take all of those things into consideration, to exercise your own judgment, justify the trust that is imposed in you by bringing in this verdict. More than that I am not asking you. Give Mr. Block every dollar he is honestly entitled to, but don't give him one dollar more for any other consideration in your sound judgment.

My time is almost up. You have had a complicated trial to listen to and perhaps at times it was tiresome one. I appreciate that. I want to thank you for the close attention that you have given to this matter and ask you to remember all of the facts that were brought to your attention when you retire to the jury room to deliberate our matter. Thank you.

Mr. Dechter: May it please the court, lady and gentlemen of the jury. We are not here to secure any exorbitant award for the property that has been forcibly taken away from Mr. Block. I join wholeheartedly in Mr. Weymann's statement. All we want is fair and just compensation, and we appreciate the privilege that that can be left in the hands of twelve impartial jurors. That is one of the blessings of our system of government.

Now, Mr. Weymann has referred to the figures on the blackboard. He hasn't commented very much on those figures. I [455] think through inadvertence he said I used as an operating cost or deduction \$50.00 a month. I refer to the fact that Mr. Block had testified that his normal operating expense was \$50.00 a month, but the operating costs that I had used on the blackboard in making that deduction was the operating cost given by his pride and joy, Mr. Wents, of \$1,380.00 a year or a total of \$2,760.00 for two years. Those are the figures I have used, and I certainly think that any buyer knowing that for the previous two years that amount would have been netted would certainly have paid a higher price than the value placed by the government's witnesses.

Now, the government's own exhibit, Plaintiff's Exhibit 8, also shows that for the period October, 1942 to June, 1943, a period of nine months, the total production was 6466 barrels. You divide that by 9 and you get 718.5 barrels; you multiply that by 12 months and you get 8622 barrels; you multiply that by 97 cents a barrel and it will give you \$8363.00; 70 per cent of that would be \$5854.00; take off \$1380.00 operating expense for a year is \$4474.00; 10 $\frac{7}{12}$ per cent overriding royalty interest would be \$619.55. Now, the government's witnesses made their appraisals when they had a chance to check against their guesses, which they were supposed to place themselves back in September of 1942. After all, these curves and guesses aren't supposed to be just something out of the air; they

must have some analogy to the facts, and when [456] later on the facts appear, it seems to me they should be taken into consideration. And I believe the government just disregarded those facts entirely in making their appraisals.

Now, Mr. Weymann starts out by attacking Mr. Block about the fact that he didn't have certain records pertaining to the well operation. Mind you, this well hasn't belonged to Mr. Block for three years. Mr. Block didn't operate the well himself; he had an operator. But fortunately for Mr. Block the law of California requires him to make certain reports under oath to the Division of Oil and Gas, which reports if made falsely are a crime, and we gave the government access to those records. Mr. Block still has his accounting records showing how much he received in dollars and cents, which were made available to the government witnesses, so there hasn't been any attempt to deceive the government, and both the government's witnesses and our witness had access to those government records.

Now, Mr. Weymann also seems to endeavor to ridicule Mr. Crown for using a figure of three cents a barrel equivalent for the gasoline and gas produced from this well. Well, if we look at Mr. Oliver's report, he used 2.8 cents a barrel instead of 3 cents a barrel. Not very much difference between those two as to the gasoline and gas content.

Mr. Weymann also seems to make much ado about the water content. You will recall Mr. Oliver on

cross examination [457] admitted that in Signal Hill for a long period of time wells have produced in very profitable amounts which have produced at the same time 80 to 90 per cent water.

Now, all we have to do is look at the production records and we can see there hasn't been any material fluctuation in the amount of oil produced in July of 1940 and in July of 1942. Mr. Weymann tried to take September, which happens to be a month where maybe by reason of some repair or shutdown the production was a little bit less than the previous month. You can't take one month and take it by itself, you have to take the average; and if you average out the production from January, 1940 down to July, 1943, you will find that it is very settled production. And if you examine this curve that Mr. Oliver has prepared, which is nothing more than a graphic chart of the production in barrels, you will find that the gas production has likewise been very settled. In other words, the gas production follows almost a parallel line with the oil production, and you will find that the gas production in September of 1942 was even higher than it was in 1940 before the government took it over, and you will find in this oil curve that some months the production goes up to over 800 barrels a month, and some months it goes down to 400; but if you average it up you find it is pretty well settled.

Mr. Weymann used an analogy of an automobile which I [458] don't think has any similarity at all, although we all know that second-hand auto-

mobiles that we paid for three or four years ago are like my Mercury that I paid eleven hundred some dollars for in 1940, I can get something like 25 per cent more for it now after using in three or four years. That is not an unusual condition. But I think the government shouldn't have the right to say that because a certain amount of this casing 5300 feet, cannot be removed, that they ought to get that casing for nothing. They want an oil well, and, mind you, Mr. Wentz testified that he went down to the well for the first time for appraisal purposes in June of 1945 and this equipment was still being used and this well is still being operated. In other words, they didn't want a dry hole, they didn't want an abandoned hole, they wanted something they could operate with the necessary equipment, and it has a value to them like it had to any other buyer, and it is for you to consider what a buyer would give for a going oil well, not for something to dismantle and take apart.

To me the analogy would be somebody leasing certain premises for a factory and he installs certain machinery and equipment, and certain items have to be installed in such a way that they can never be removed; the owner of that factory sells out the lease and the factory, does that mean that because at the end of 10 years he can't remove certain articles that the buyer can say to him, "I will disregard the value of [459] it"? He is going to get the benefit of that use for the balance of the life of that lease. And that is exactly the situation here.

Mr. Weymann mentioned about taking advantage of war conditions. We are not here to take advantage of war earnings. We are complaining of the fact that the war is depleting the oil reserves at a greater amount than normally they would be depleted, and therefore by reason of that the oil reserves are less than they normally would be, and it is a simple equation that when the supply is reduced the price of the demand goes up. That is the situation here. The war hasn't helped the oil industry; it has depleted a natural resource. It has done that to all our natural resources. [460]

Also a buyer, in buying a piece of property would take into consideration past history. What does past history show you? That after every war in world history for an average period of about 10 years there has always been a boom or inflation, and that is what people generally expect after this war. They don't expect wages to go down. They don't expect prices to go down, and that is what a buyer would take into consideration and would have taken into consideration in 1942.

Now, something Mr. Wents brought out is very pertinent. He has been recommending to clients of his to drill wells now that cost about \$30,000.00 to get 30 barrels a day production initially. I think that is a very important thing to remember. If somebody will start from the grass roots and drill a well and know they can only expect 30 barrels a day to start off with and the production tapers off from that, that shows you what the oil market and condition is at the present time.

Now, Mr. Weymann has said that a buyer takes into consideration adverse factors. I agree with him, but the buyer does not, like the government witnesses, shut his eyes to all favorable factors. He takes the favorable factors into consideration as much as the adverse factors and weighs them both and I feel that you members of the jury will do the same thing, and I am frankly content to place the matter in your hands, [461] and all I ask for my client is a fair and just compensation. All I ask is that you give him in money the equivalent of what he should fairly and justly have by reason of this property being taken away, and I am satisfied to leave it in your hands.

The Court: The court will take a recess at this time. It is not quite 12:00 o'clock. Do you think you could all be back here at 1:30? Would that give you enough time?

(No response.)

The Court: Very well. The court will recess at this time until half past one this afternoon, and you will bear in mind the admonitions of the court heretofore given you.

(Whereupon, at 11:55 o'clock a. m., a recess was taken until 1:30 p. m. of the same day.)

Los Angeles, California,

Tuesday, July 31, 1945, 1:30 p. m.

The Court: The jurors are all present and in their places; is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Members of the jury, it becomes my duty as judge to instruct you in the law that applies to this case, and it is your duty, as jurors, to follow the law as the court gives it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider the evidence for that purpose.

The law you must accept from the court as correctly declared in these instructions. The instructions are to be considered as a whole.

In judging of the credibility of witnesses, you shall have in mind the law that a witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence, by the manner in which the witness testifies, or by the character of his testimony.

By a preponderance of the evidence is meant its greater weight in reference to its credibility, and it depends not necessarily upon the number of witnesses testifying but rather upon the character of the testimony with reference to its probable truth or falsity. [463]

If the evidence is evenly balanced in your minds, so that you are unable to say that the evidence on either side of the issue preponderates, then your finding must be against the party carrying the burden of proof, namely, the one who asserts the affirmative of the issue.

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against

the declarations of a lesser number or a presumption or other evidence, which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary, if from the whole case, considering the credibility of witnesses and after weighing the various factors of evidence, you should believe [464] that there is a balance of probability pointing to the accuracy and honesty of the one witness.

You will disregard as evidence any statements made by any counsel during the trial of the case unless it amounted to an agreement concerning a fact in the case, and you are to exclude from consideration and entirely disregard any evidence offered and rejected or stricken by the court, treating the same as though you had not heard it or it had never been offered.

If you believe that any witness has wilfully sworn falsely as to any material fact in this case, you

may disregard the whole of such witness' testimony.

If the court has said or done anything which has suggested to you that it is inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion.

The court has not expressed, nor intended to express, any opinion as to what witnesses are, or are not, worthy of credence; what facts are, or are not, established, or what inferences should be drawn from the evidence. If any expression of the court has seemed to indicate an opinion relating to any of these matters, you are to disregard it.

Any statement made by the court in considering an objection or motion, or in ruling upon such objection or motion, is made only in discussing the legal problem presented, or in [465] explaining the ruling of the court. Such statement should have no effect upon the determination of any question of fact by the jury. If any such statements were made in the course of these proceedings, they must be entirely disregarded by the jury.

You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against any party to the action.

In determining the fair market value of the leasehold estate and the production facilities and equipment used in connection with the operation of the well, you are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary part of the said well in the production of oil therefrom.

I am going to have to amend one of those offered instructions as I see its duplication in one already given.

I want the record to show that the first two sentences of Plaintiff's Instruction No. 1 have been eliminated by the court. This was done because it appears that there is a duplication. I also want the record to show that Defendant's Instruction No. 28 will not be given. That has been covered or will have been covered by instructions which the court expects to read.

I think the parties have agreed to this.

Mr. Dechter: Yes, your Honor; no objection.

The Court: In this case the ultimate question of fact to be determined by you is the actual market value of the property of the defendant, Sam Block, sought to be condemned in this action as of September 28, 1942.

The plaintiff in this action is the United States of America. These terms are interchangeable and will be so understood by you in these instructions. The term "Plaintiff," "United States of America" and "Government" will mean one and the same party.

The Constitution of the United States provides that private property shall not be taken "without just compensation."

Just compensation means, and will be fully accomplished, in this case by the payment of the amount you determine to be the fair market value of the defendant's property as of September 28, 1942.

“Fair market value,” wherever used in these charges, means that sum of money which, considering all the circumstances, could have been obtained for the property; that is, the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, both parties being informed as to all the facts, favorable and unfavorable which would affect the sale. In making that estimate there should be taken into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining. [467] Keep in mind that you are not to find the value put on the property by the owner for a special or a speculative or an investment purpose, but that you are to find the fair market value as of the date given.

The proper inquiry to be made in this proceeding is what price would the parcel of property bring if put upon the market at that time and sold for cash. As between individuals the owner may demand any price for his or her property, but when it is taken for public purposes, he or she can only demand its fair market value. In this respect, you must bear in mind that the fair market value cannot depend in any degree upon the will of the owner, because to allow his or her judgment or fancy, in relation to the proper use of the property to influence the question of value, would be to make the property either more or less valuable, as it might happen to be possessed by one individual or another.

Your verdict must not be based upon what you think would be a proper adjustment in money between the plaintiff and the defendant in this action, nor are you entitled to base it upon, nor even to consider, the necessity of the plaintiff to obtain this parcel. It may not be based upon, nor may you consider, the needs of the defendant, nor whether the defendant wanted to sell or did not want to sell. You must not base your verdict upon, nor should you consider, any sympathy to the defendant nor the ability of the plaintiff to pay. [468] Your verdict must be based solely upon what you find to be the actual market value of defendant's property as of September 28, 1942, and the law as I declare it to you, with your minds free.

The plaintiff is entitled to the same fair and unbiased treatment at your hands as if it were a private individual, and the fact that it might be able to pay a greater sum for these properties than a private individual must not be permitted to affect your verdict.

The question for the jury here is what has the owner of the property lost, not what has the taker gained. What is to be compensated for in this case is the loss caused the owner by the taking of his property for public purposes and not the value of the property to the government for those uses.

Just compensation is intended to equalize the loss caused the owner by the taking of his property for public use, and not the value of the property as applied to the public use. Therefore, the owner is not entitled to be compensated for any enhanced

value of the property attributable to the public purpose for which the lands are being taken. How much it may be worth to the public for those purposes to which it will be applied is a question with which the jury have nothing to do.

The testimony of a witness as to value is his opinion thereof, based upon his education, study, experience, [469] investigations, knowledge of the property, and the reasons for that opinion. You should consider such opinion and should weigh the education, study, experience, investigations, knowledge of the properties, and reasons of the witness for the opinion of value as expressed by him, and give to that opinion such weight as you deem it entitled to, whether it be great or slight. If you believe that the opinion of a witness was expressed without a sufficient investigation in order to inform himself about all material facts, or without sufficient knowledge of the material facts to form a just opinion, or if you believe the reasons advanced by him for his opinion are unsound, you may reject that opinion.

During the course of the proceedings I asked some of the witnesses to talk loud enough for you to hear. Is the court talking loud enough for you?

The Jurors: Yes.

The Court: Am I reading too fast for you? I want you to hear all of the instructions.

If you find and believe from the entire testimony that any of the witnesses have magnified or exaggerated the value thereof, or on the other hand have minimized or diminished the value thereof on

account of his or her interest in the suit or in the lands—I will change that to “property” instead of “lands.” I will read that part again: of his or her interest in the suit or in the property, or his or her [470] prejudice, lack of candor or want of knowledge or lack of familiarity with the premises or from lack of experience or lack of trustworthiness, or for any other reason, then it is your duty to reject the evidence of such witness or witnesses insofar as you believe the same to have been exaggerated or minimized. You must arrive at your verdict from what you find to be a preponderance of the credible evidence as to the amount of money the owner is entitled to receive as just compensation for the loss to him, occasioned by the taking of his property in question on the dates specified.

You shall not render what is called a “quotient verdict.” By the term quotient verdict is meant a verdict arrived at by chance or lot. Therefore, you shall not agree that each juror shall set down a sum which he thinks is the amount to be awarded any claimant as just compensation and then add all of said sums for a total aggregate and then divide such total aggregate by the number of jurors and the result obtained, whatever it may be, returned as your verdict. Such a verdict arrived at in such a manner is a quotient verdict and is illegal and void. Likewise, you shall not arrive at your verdict by any similar mathematical scheme or plan based upon chance or lot. Your verdict should be based upon the evidence as presented in

the trial of this case and applied to the law as given you in these charges by the court.

If in these instructions, any rule, direction or idea [471] be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions and as a whole, and to regard each in the light of all the others.

And I may add, in that connection, if the court reads a part of an instruction or one instruction faster or louder than it does any of the others that is done unintentionally and it doesn't mean that the court is trying to emphasize any instruction or any part of an instruction.

The court advises you that this is a civil case and a preponderance of the evidence on a question submitted to you for decision justifies you in finding accordingly.

This is a proceeding in eminent domain, that is, a proceeding whereby the United States of America, for the use of the Reconstruction Finance Corporation, seeks to condemn and appropriate to public use certain private property described in the complaint herein. The Constitution of the United States provides that private property shall not be taken for public use without just compensation being made to the owner of such property. One of the questions for your determination as jurors in this case is the amount of compensation which, under the evidence, will be just compensation to

the owner for such private property appropriated [472] through this action to the public use.

The inquiry in all such cases as to the uses of property in relation to market value is: What is the property worth in the open market, viewed not merely with reference to the use to which it is at the time applied, but with reference to the uses for which it is adapted; that is to say, what is it worth from its adaptability for all uses, having regard to the existing wants of the community and such wants as reasonably may be expected in the immediate future, and in this connection you may take into consideration all of the uses for which the property is reasonably adaptable, including its particular fitness for particular purposes, when such evidence of such purposes forms a factor in determining the market value.

In determining the market value of the property here involved, you may consider its location and environment and the character and nature of the developments surrounding it, its physical characteristics, its accessibility or lack thereof, and any and all physical factors that may in any wise affect its adaptability and therefore its value in the open market.

The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would

have [473] occupied if his property had not been taken.

In determining the market value of the land in controversy you are not bound by the opinion of market value expressed by any one or more of the witnesses who have testified in the case. It is proper that you should consider such testimony and give it such weight and credit as in your judgment it deserves; but if, in your judgment, the value fixed by one or more of the witnesses is not reasonable, you should disregard it and find such amount as in your judgment would be reasonable from the facts which you believe to be established by the evidence in the case.

You are instructed that in this case the burden is upon the defendant to prove the amount of compensation to which he is entitled by reason of the condemnation of his property by the plaintiff and that such compensation must be proven by a preponderance of the evidence. This means that the evidence on the part of the defendant as to the value of the property to be condemned must have greater weight in your estimation and more convincing effect than that of the plaintiff.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you.

The attitude of jurors at the outset of their deliberations is a matter of considerable importance. It is rarely [474] productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to an-

nounce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if and when shown that it is fallacious. Remember that you are not partisans or advocates in this matter, but are judges. The final test of the quality of your service will lie in the verdict which you return to this courtroom, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the court would remind you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth. It is your duty as jurors to consult with one another and to deliberate, with a view to reaching an agreement if you can do so without violence to your individual judgment. To each of you I would say that you must decide the case for yourself but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, [475] you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jur-

ors. Upon retiring to the jury room you will select one of your number to act as foreman, who will preside over your deliberations and who will sign the verdict to which you agree. As soon as all of you have agreed upon a verdict, you shall have it signed and dated by your foreman, and then shall return with it to this courtroom.

A form of verdict will be given to you by the court. Swear the officers.

(Thereupon the bailiffs were sworn by the clerk.)

The Court: There was some suggestion that the jurors might be given the inventory. Is that your desire?

Mr. Dechter: Yes.

The Court: Do you have one, Mr. Clifton?

The Clerk: No, I don't, your Honor.

The Court: Do you have one in addition to the one you need?

Mr. Dechter: They can have my copy.

The Court: It is not marked in any way, is it?

Mr. Dechter: I was just going to look, your Honor, and see.

There are some pencil notations and figures.

The Court: Perhaps we better have one that is not marked.

Mr. Weymann: I can immediately get a copy.

The Court: You get one and we will send it up to them. They can have any of the exhibits they desire to have.

You may retire for your deliberations.

(Whereupon, the jury retired to deliberate

and the following proceedings were had in the absence of the jury:)

Mr. Dechter: Your Honor, Mr. Weymann and I are willing to stipulate, if it is agreeable to the court, that the jury may return its verdict in the absence of counsel.

Mr. Weymann: I am willing to so stipulate, your Honor.

The Court: Very well. Let the stipulation be entered. The court, however, would prefer to have you here. You will be available if we desire to get you?

Mr. Dechter: Yes, your Honor.

The Court: Because sometimes the jury wants instructions read, and I don't like to do that in the absence of counsel.

Mr. Dechter: I can get here in 10 minutes, or Mr. Hoyt can stay here if your Honor prefers it.

The Court: No, as long as you can come in a reasonably short time.

Mr. Dechter: I would appreciate it, because it will give us a chance to do something else.

Mr. Weymann: And I can get here in two minutes, if the court please.

Mr. Dechter: Thank you, your Honor. [477]

The Court: Court is now recessed.

Mr. Weymann: Pardon me. That copy of the inventory, Mr. McLay has gone for it.

Mr. Dechter: As long as you say it is a copy, it is O. K.

Mr. Weymann: It is the same as the mimeo-

graphed copy that you have; it is from the same stencil.

(Whereupon, at 2:10 o'clock court was recessed.) [478]

(Whereupon, at 5:50 o'clock p. m. the jury returned to the court room and the following proceedings were had:)

The Court: The jurors are all in their places, is it so stipulated?

Mr. Hoyt: So stipulated.

Mr. Weymann: So stipulated.

The Court: Have you agreed upon a verdict?

Juror Wilson: Yes.

The Court: Are you the foreman?

Juror Wilson: Yes.

The Court: Will you read it, please?

(Whereupon, the verdict of the jury was read by the foreman.)

The Court: Is it signed by you as foreman?

Juror Wilson: It is signed by me.

(The verdict was handed to the court.)

The Court: Read it, please.

The Clerk:

“In the District Court of the United States, Southern District of California, Central Division.

No. 2454-B—Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND, etc., et al.,
Defendants.

VERDICT AS TO INTEREST OF DEFENDANT SAM BLOCK IN PARCELS 87 AND 103, AS DESCRIBED IN AMENDED COMPLAINT.

“We, the Jury in the above-entitled case, find the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all the production facilities and equipment used on said date in the operation of the well, to be the sum of \$20,397.00.

“We further find the market value of as September 28, 1942, of the 10 7/12 per cent overriding royalty of the defendant Sam Block to be the sum of \$1,857.00.

“Total market value of the foregoing as of September 28, 1942, is \$22,254.00.

“Dated: Los Angeles, California,

“July 31, 1945.

“ALBERT E. WILSON,
Foreman of the Jury.”

Is that your verdict each and all, lady and gentlemen?

The Jurors: Yes.

The Court: Does either party desire to have the jury polled?

Mr. Hoyt: I have no particular desire.

Mr. Weymann: May the jury be polled?

The Clerk: As I call your names, lady and gentlemen, will you state yes or no if the verdict as read is your verdict.

Earle C. Brown?

Juror Brown: Yes. [480]

The Clerk: Russell B. Snow?

Juror Snow: Yes.

The Clerk: Harry Friedman?

Juror Friedman: Yes.

The Clerk: Albert E. Wilson?

Juror Wilson: Yes.

The Clerk: Spencer T. Honig?

Juror Honig: Yes.

The Clerk: W. S. Tupman?

Juror Tupman: Yes.

The Clerk: John C. Hobson?

Juror Hobson: Yes.

The Clerk: L. W. Mills?

Juror Mills: Yes.

The Clerk: A. S. Porter?

Juror Porter: Yes.

The Clerk: Hazel McAvoy?

Juror McAvoy: Yes.

The Clerk: Walter G. Bradley?

Juror Bradley: Yes.

The Clerk: A. C. Byrne?

Juror Byrne: Yes.

The Court: Each one of the jurors announces that the verdict as read is his verdict.

The members of the jury are now excused. You will be notified when to return. Court is now adjourned. [481]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 31st day of July, A. D. 1945.

/s/ MYRTLE BENNALLACK,

/s/ SAMUEL GOLDSTEIN,

Official Reporters.

[Endorsed]: Filed Mar. 22, 1946.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEED-
INGS ON MOTION FOR NEW TRIAL.

Los Angeles, California,

Monday, October 1, 1945

Appearances: For the Plaintiff August Weymann, Esq., and Arch G. McLay, Esq., Special Attorneys, Lands Division, Department of Justice. For the Defendant: Raphael Dechter, Esq., and B. L. Hoyt, Esq., 633 Subway Terminal Building, Los Angeles, 13, California. [1]

Los Angeles, California,

Monday, October 1, 1945, 2:00 P. M.

Mr. Weymann: This, if the court please, is a motion to set aside the verdict of the jury, to vacate the judgment thereon, and grant a new trial upon all the grounds stated in the written notice of motion. The grounds stated are: Excessive damages appearing to have been given under the influence of passion or prejudice; the insufficiency of the evidence to justify the verdict of \$20,397.00 as the fair market value of the leasehold estate of the defendant, including all other production facilities and equipment used in the operation of the defendant's well; that the verdict is against law; and errors in law occurring at the trial and excepted to by the plaintiff.

* Page numbering appearing at top of page of original Reporter's Transcript.

Your Honor will recall this case was commenced on July 24th of this year, and the jury brought in a verdict for \$20,397.00, which they found to be the market value on September 28, 1942, of the leasehold estate of the defendant Block, including all of the production facilities and equipment which were used on that date in the operation of his well.

The jury's verdict purported to be rendered under the instructions given by the court, which were, in part, as follows:

“In determining the fair market value of the [2] leasehold estate and the production facilities and equipment used in connection with the operation of the well, you are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary part of the said well in the production of oil therefrom.”

I might say for the convenience of the court that as I quote parts of the record I will refer to the page of the transcript. That is transcript page 466.

The court further instructed the jury as to market value in these terms:

“ ‘Fair market value’ * * * means that sum of money, which, considering all the circumstances, could have been obtained for the property; that is, the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, both parties being informed as to all the facts, favorable and unfavorable which would affect the sale. In making that estimate there should be

taken into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining." Transcript 467.

The Court: I don't have the instructions before me. [3] What is the number of that instruction, Mr. Weymann?

Mr. Weymann: I haven't the number of that instruction, if the court please. If you will recall, so many of the instructions were consolidated after a conference, so that the original numbers of the instructions submitted were rearranged.

The Court: I think I had them all numbered as I gave them, so when Mr. Clifton comes in he will probably have it.

Was the other instruction numbered? I think they just didn't give the numbers in the transcript.

Mr. Weymann: They did not, if the court please. That was page 467, this one on market value.

The Court: You referred to a previous instruction.

Mr. Weymann: As to the unit valuation. That is transcript page 466.

The Court: They were both plaintiff's instructions, weren't they?

Mr. Weymann: They were plaintiff's instructions, yes, sir.

The Court: That is proposed instructions?

Mr. Weymann: Yes, proposed instructions.

The Court: They are all instructions of the court when the court gives them.

Mr. Weymann: All instructions which the court gave, at any rate. [4]

The Court: You may proceed.

Mr. Weymann: There is this further instruction:

“* * * you are not to find the value put on the property by the owner for a special or a speculative or an investment purpose, but that you are to find the fair market value as of the date given.

“The proper inquiry to be made in this proceeding is what price would the parcel of property bring if put upon the market at that time and sold for cash.”

That appears in the transcript at page 468.

No exceptions were taken to these instructions, and it may be deemed conceded, therefore, that they correctly state the law which the jury was bound to follow, and the verdict, of course, should be judged in the light of those instructions.

The property which was the subject matter of the trial, so far as this motion is concerned, was an oil and gas sub-lease owned by the defendant Block in the Playa del Rey field.

There was one producing well on that known as Block's No. 10, together with the production facilities and equipment necessary to make it a producing well. No evidence of sales of comparable property was introduced by either side.

I think it will be conceded that it is practically impossible to find a comparable oil property which is comparable [5] in all essential elements, because oil wells are too individual in their characteristics.

However, there was no evidence of sales of other property.

I would like to call your Honor's attention, then, to the basis of valuation as we conceive it, and as I believe it was tried by both parties. The elements which go to make up the market value of an oil lease are the potential future production from the lease and the profit which the operator or lessee may reasonably expect to derive from the production and the sale of the minerals after paying all expenses and charges necessary to recover and reduce to possession the minerals which may be found on the property. We speak of an oil lease as an interest in real property, and in legal terminology call it a *profit a prendre*. In the last analysis it is nothing more nor less than the right to go on another man's property and at one's own expense recover, possess and sell whatever of value may be recovered.

Obviously, if nothing is recovered the right is valueless. And if the expense of recovery exceeds the probable recovery, the right is also valueless. There are many instances in which that occurs, of course. Or if the means essential to the recovery are not available or cannot be procured at a reasonable price, then, also, the right is valueless.

Our physicists tell us that it is possible to transmute metals, but a patent on that at the present development of the [6] science would be valueless because of the excessive cost. There are billions of dollars of gold in sea water, we are told, but the cost of extracting it is so enormous that it isn't

a practical proposition. So it may well be that an oil lease which has recoverable minerals in the ground may be valueless if the cost of recovering the minerals exceeds what may be recovered.

Now, a purchaser, this hypothetical purchaser of the Block lease, is going to ask himself: How much can I get out of this? How much will it cost? If the equipment to get it out, plus the cost of operation, costs more than I can get in minerals together with what I may be able to salvage from the equipment after I am through using it, manifestly I wouldn't pay anything for the lease.

Frequently when leases are abandoned, of course, there is a salvage value of the equipment, and it is conceivable that a lease may be purchased in order to abandon it and salvage the equipment, because that may be worth more than the recoverable oil.

I wanted to preface the discussion of the evidence so that our viewpoint may be clearly before the court. Now I come to the evidence upon which this verdict must be justified if at all.

Defendant Block produced five witnesses on the issue of value. The owner, Block, testified giving separate [7] valuations for the lease and for the equipment which he intended to use to produce the lease.

The defendant produced Mr. Rubin and Mr. Rush, who qualified as dealers in used oil well producing equipment, and who testified as to the market value of the equipment only as of October 4, 1943, and under questioning by the court it was brought out

from several witnesses that the value as of September 28, 1942, and October 4, 1943, was substantially the same.

The defendant produced one petroleum engineer consultant, Mr. Crown, who testified as to the value of the future recovery of minerals from the property, but he gave no opinion as to the market value of the equipment realized at any time.

The Court: Before you leave that, how much did Mr. Block value it at? I have forgotten the exact figures.

Mr. Weymann: I was going to analyze that in detail, if the court please. I am just reciting the witnesses and what they testified to.

The Court: Go ahead.

Mr. Weymann: They produced also Mr. Owens, who qualified on abandonment of wells, and he testified to the cost of the abandonment of the wells. Five witnesses for the defendant.

The plaintiff produced two witnesses, the engineers, [8] Oliver and Wents, each of whom testified as to the market value of the leasehold estate, together with the equipment used in producing the well as a single operating unit and as a going concern.

Now, in that regard they agreed thoroughly with the theory of the defendant, because in his argument to the jury Mr. Dechter said: The government is taking over a going concern, and you can't have a going well unless you have all of this personal equipment.

That is the theory, of course, of the plaintiff, and of the defendant in this proceeding.

Now, coming to the testimony of the individual witnesses. The defendant Block testified that in his opinion his lease was worth \$35,000.00, transcript 72; and the equipment to operate the lease was worth an additional \$22,000.00, transcript 73; but under persistent questioning both by counsel for plaintiff and finally by the court he said he contemplated the use of that equipment in getting the production lease. Transcript 87.

He arrived at his valuation of the lease by assuming a production of 25 barrels a day for 10 years of 365 days each at 94 cents a barrel. That is transcript 75 and 90. He allowed \$25,000.00, roughly, for the total operation cost, but said he never kept track of it. Transcript 76. That while his valuation was based on a price of 94 cents a barrel [9] for 10 years, at the time of the acquisition of the property by the government he was receiving around 75 cents a barrel. Transcript 77. When he was asked under cross examination if he kept records to ascertain whether the well was paying, he testified that the only record he had was that at the end of the month he deducted his expenses and ascertained how much was left over every month from all of his ten wells together. Transcript 91, 92. Under cross-examination, however, he testified that these figures which he had given as to value were based upon what the property was worth to him, not what a willing buyer would pay for it. Transcript 94, 95.

Now, Defendant's counsel referred——

The Court: Excuse me.

Mr. Weymann: Yes.

The Court: How long do you think it will take you to present your argument, Mr. Weymann?

Mr. Weymann: I think I can finish it up in another 20 minutes.

The Court: Would it be agreeable to you gentlemen to return in the morning?

Mr. Weymann: I think so.

The Court: How about you, Mr. Dechter?

Mr. Weymann: If that is the court's pleasure.

Mr. Dechter: It will have to be agreeable.

The Court: No, it isn't the court's pleasure. There is [10] a regular meeting of the judges being held this afternoon, and they are awaiting my attendance.

Mr. Dechter: I think that will be satisfactory. I will just cancel some appointments I have.

The Court: If you can do that.

Mr. Dechter: Absolutely.

The Court: I can arrange it for 9:00 o'clock in the morning if that will help you. In fact, it will suit me just as well.

Mr. Weymann: I don't know. We upstairs have so much correspondence to get out.

The Court: You can get that out afterwards, can't you?

Mr. Weymann: Yes. I have an appointment made at 10:00 o'clock which I will have to cancel.

The Court: If you meet at 9:00 you will be through at 10:00.

Mr. Weymann: If that is agreeable to the court.

The Court: Is that satisfactory to you?

Mr. Weymann: Yes, that is satisfactory.

The Court: Very well. We will continue this to 9:00 o'clock in the morning. I am sorry about it. I had really forgotten about the judges' meeting.

Mr. Dechter: It is perfectly all right.

(Whereupon, at 3:10 o'clock an adjournment was taken until 9:00 o'clock a. m., Tuesday, October 2, 1945.) [11]

Los Angeles, California,

Tuesday, October 2, 1945. 9:00 a.m.

The Court: Proceed, Mr. Weymann.

Mr. Weymann: I believe yesterday afternoon when we took our adjournment we had just completed the consideration of Mr. Block's testimony. I stated that under cross examination he testified that the figures as to value which he had given were based upon what the property was worth to him. The testimony is set forth on pages 94 and 95 of the transcript. He was asked this question:

"When you made this valuation to which you have testified, Mr. Block, so we can get this thing clear in our own minds, was that the estimate of what the well was worth to you or what you thought a willing buyer would pay for it in the event that you were willing to sell it?

"A. I never sold any wells.

"Q. You never sold any wells?

“A. I don’t sell any wells.”

And I asked the reporter to read the question to Mr. Block, and he answered: “I never cared to sell any wells. I always liked to buy them.”

“The Court: Just answer the question yes or no, and then you may explain your answer if it is necessary.

“The Witness: I would say what it was worth to me. [12]

“Q. By Mr. Weymann: Then, the figures to which you have testified are based on what it was worth to you? A. Yes, sir.”

Of course, on testimony of that kind under the court’s instruction that is no predicate for arriving at market value, and I think counsel clearly conceded that and properly so when he commented on it in his address to the jury. I quote:

“You have the testimony of Mr. Block that the value of the leasehold to him is \$35,000.00. Now, he is not a lawyer and he doesn’t know that that doesn’t constitute market value. It must be the value to both a buyer and a seller; not just to him alone.”

That, I think, eliminates, or should eliminate or should have eliminated, from the consideration of the jury the testimony of Mr. Block altogether as to market value.

We come, then, to the testimony of Mr. Rubin, the expert on value of used equipment. He testified that he was shown a copy of the inventory of all of the personal property which was found on the Block’s well, and he was asked to look it over for

the purpose of testifying as to value. He formed an opinion after looking over a copy of that inventory and testified, over plaintiff's objection—transcript 118, 119—that it was worth over \$22,000.00. There was no cross [13] examination of that witness.

Defendant's witness Rush also testified, over plaintiff's objection—transcript 160—that the market value——

The Court: Pardon me before you read that, Mr. Weymann.

Mr. Rubin's testimony was in regard to the inventory of the personal property?

Mr. Weymann: That is correct, your Honor.

The Court: Very well. Proceed.

Mr. Weymann: Defendant's witness Rush—that was also as to the inventory of the personal property. He also testified over plaintiff's objection, transcript 160, that the market value of all of the equipment on the well as scheduled in plaintiff's inventory was approximately \$18,000.00. That appears on transcript 162.

On cross examination he testified that his estimate was based on the value of that equipment in place.

The Court: Read the last two sentences or so, Mr. Goldstein.

(The record was read.)

Mr. Weymann: That appears on transcript 166. That valuation was as of October, 1943. It was subsequently brought out from questioning of both plaintiff's and defendant's witnesses that the value

as of September 28, 1942, and of October, 1943, was substantially the same.

However, Mr. Rush further testified that after eliminating [14] the casing and the liner in the well which could not be removed when the well was abandoned, the remaining equipment was of the value of \$12,260.00. That appears on transcript 179. And all of this equipment, of course, was essential to the operation of the well.

That figure of \$12,260 will later become important in our analysis of the evidence.

Witness Crown was produced as a consulting petroleum engineer. He testified that he had been so engaged for a period of one year, and his testimony was to the effect that the ultimate future recovery from the well was 40,300 barrels, to be produced over a period of 10 years. That appears on transcript 199. He estimated the present market value of defendant's interest in that production at \$10,930.00 or, in round figures \$11,000.00, transcript 128, based on an operating profit over that period of 10 years of \$13,494.00, transcript 204.

The Court: What is the page number where he estimated the value of the oil to the leasehold?

Mr. Weymann: Page 128.

The Court: 128?

Mr. Weymann: Yes, 128. If I recall correctly, Mr. Crown gave way to another witness. His testimony was——

The Court: How much was it, \$10,000.00?

Mr. Weymann: \$10,930.00, and he rounded that out to [15] \$11,000.00. His valuation didn't include

anything for personal property at any time. He arrived at his estimate of future profit by using a total sales price of 97 cents per barrel—that is transcript 200-203—which was made up of a posted market price of 94 cents for oil in the spring of 1943, plus 3 cents for gas and gasoline.

He testified, also, that in September, 1942, September 28th, when the well was taken over, and until the spring of 1943, the posted market price was not 94 cents per barrel for the oil, but approximately 77 cents. In arriving at his valuation——

The Court: Was he the one who testified that they actually received 81 cents, or something of that kind?

Mr. Weymann: No. I think that was the government's witnesses. I think it was Mr. Oliver.

The Court: Pardon the interruption.

Mr. Weymann: Surely. I believe Mr. Dechter will bear me out on that.

The Court: That is unimportant now.

Mr. Weymann: Well, in arriving at his valuation he didn't take into account any cost of abandonment, although he admitted that there always is a cost of abandonment. He didn't know the provisions of the lease or of the sub-lease, and made no effort to ascertain them. He didn't take into account any possible pipeline charges or trucking charges for [16] the delivery of the oil to the refinery.

He was asked on cross examination whether if there was such a charge the price paid by the purchaser of the oil would be the same, and his answer

was: "I don't know just how they would handle that. If they had to pay a trucking charge there, why it might be taken off the price of the crude." That is on transcript 201.

He didn't know if they had to pay a trucking charge, and didn't take it into consideration, made no investigation.

He computed the operating cost to produce that well over the period of 10 years at \$13,870.00. Transcript 204. But your Honor will recall that the owner himself testified that the normal operating cost per month was, to use his own language, "A couple of hundred dollars a month." That occurs on transcript 104.

Defendant's last witness Owens was engaged in the business of oil well abandonment. He testified that the usual and reasonable charges for abandoning an oil well in the del Rey field in September, 1942, was about \$800.00, and that it would be about the same in October, 1943; and that it would be substantially the same eight or ten years hence. That didn't include the cost of cleaning up the property, filling up the sum pits and restoring the property. That he said would run from \$800.00 to \$1,000.00 additional. That would make the cost of abandonment from \$1600.00 to \$1800.00. [17]

That constitutes defendant's evidence of value.

I just want to go over the plaintiff's evidence merely for the purpose of showing that there is nothing in that evidence to support the jury's verdict.

Mr. Oliver for the plaintiff testified that in his

opinion the 70 per cent interest of Mr. Block in the well had a probable market value as of September 28, 1942, of \$5650.00. That amount was arrived at by the summation of the market value of the oil reserves approximately \$3150.00, and the salvage value of the equipment upon the abandonment of the well after paying abandonment costs of \$2500.00. That appears on transcript 242.

Plaintiff's witness Wents testified that in his opinion the market value of Mr. Block's 70 per cent operating interest in the production of the well, together with the appurtenances, had as of September 28, 1942, a fair market value of \$5690.00, and that in his opinion there would be no substantial difference in the value of the mechanical equipment between September 28, 1942, and October 4, 1943. He estimated the future life of the well at 10 years, which was the same as Mr. Crown's.

Now, if the court please, I would like to analyze defendant's evidence of value, resolve all doubts and questions, conflicts, in its favor, and see if by any stretch of the imagination a verdict of \$20,397.00 can be justified [18] on that evidence alone.

As we have seen, defendant's witness Crown arrived at a total operating profit on 40,300 barrels of potential future production of \$30,494.00 over a period of 10 years. After deducting operating costs of \$13,870.00 for 10 years, which is roughly \$10,000.00 less than the owner himself testified it would cost him to operate, Mr. Crown's estimate ignores any question of delivery charges, of cost of abandonment, based on a price of oil which was not in effect

at the time this hypothetical sale was made but which didn't come into existence until six months afterwards. However, solely for the purpose of testing the validity of this verdict we will accept his figures, his estimates of future production and cost of operation. Taking, then, the \$13,494.00 estimated operating profit as correct, that in Mr. Crown's opinion had a market value as of September, 1942, of \$10,930.00. Mr. Rush's estimate of the market value of the recoverable equipment is \$12,260.00. That he testified was necessary for the continued operation of the well. Of course, that couldn't be realized without destroying Mr. Crown's estimate of market value of \$11,000.00, because it was one integral unit. It couldn't be realized in less than 10 years, the estimated life of the well.

Now, the question arises: Would any rational person, any man using ordinary judgment, invest \$12,260.00 in equipment [19] for the purpose of producing that well with the idea of getting back for that equipment just \$12,260.00?

Mr. Crown recognized that a man is entitled to some return on his capital investment, and he discounted those future earnings at six per cent.

So, suppose we discount this \$12,260.00 of capital investment in equipment, assuming that that amount can be realized at the end of 10 years—which to my mind is an utter absurdity—but supposing we discount that six per cent, that would give rise to a present worth of that hoped for \$12,260.00 of \$6988.00. Add that to the \$10,930.00, which is to be realized—which is the market value of the future

production—and we have a total of \$17,918.00. But according to defendant's own testimony there would have to be expended approximately \$1800.00 in cleaning up the property, reducing at the highest possible estimate the present value of the purchaser's ultimate recovery to \$16,118.00, taking defendant's testimony at its face value.

I say in using those figures that we assumed that the man could get \$12,260.00 for this equipment in 10 years from now. Now, it is a matter of common knowledge that machinery or equipment depreciates in value; that no man can expect after using equipment, and particularly oil producing equipment, for 10 years, that it would be worth the same after that use as it was before he used it. It is utterly absurd, it [20] seems to me. Counsel in his argument made much of the fact that in 1945, July, 1945, he could get more for his 1940 Mercury than he paid for it. That is probably true. But I doubt very much if any one would, in 1945, pay \$1100.00 for a 1940 Mercury in the anticipation of getting \$1100.00 or more, with profit, 10 years later, because that wouldn't be an investment, that would merely be a gamble that the war and the conditions of scarcity brought about by the war would continue and intensify over that period; and that, certainly, is no basis for estimating just compensation in condemnation proceedings.

We submit that an informed purchaser and a reasonable seller would expect to write off the standard rate of depreciation on this equipment, 5 per cent per year—that is the standard rate used in all depreciations taken on such equipment, and that

they would recognize that the value of that had depreciated 50 per cent at the end of 10 years. In other words, that the man who bought this well with the equipment at the end of 10 years would only expect to get one-half of the present value of the equipment, but he wouldn't get that for 10 years, so that value should be discounted to present worth. And, when we depreciate that to present worth, instead of \$6988.00 to be realized for this equipment, we have \$3490.00; and, adding that to the \$10,930.00, we have a total present worth of the future [21] recovery reasonably to be anticipated of \$14,420.00, from which we have to deduct the \$1800.00 which has to be expended to fulfill the conditions of the lease. That leaves \$12,620.00, leaving out entirely plaintiff's evidence of market value, and ignoring the glaring discrepancies and omissions in Mr. Crown's valuation to which I called attention.

We may test the reasonableness of this verdict by the reverse process: A buyer of a stripper well, and edge well, single well, in a partially depleted field, would reasonably, it would seem, expect to receive 12 per cent per annum on his investment, considering all of the hazards of that business. We won't take 12 per cent; we will take 6 per cent. Now, he pays, according to the verdict of the jury, \$20,397.00 for this well. Now, if he is to realize 6 per cent on his investment over the period of 10 years, he should get \$12,228.00 interest, or a total of \$32,625.00 from the sale of the production, from the salvage of the equipment, and anything that may be realizable from his purchase.

What does he receive at the highest? He receives \$24,000.00.

Now, what does that work out to? The ultimate operating profit is \$24,000.00. He is paid, according to the jury's verdict, \$20,400.00, in round figures, which leaves him the enormous profit on a single producing oil well of \$3600.00 over a period of 10 years. That is 17 $\frac{6}{10}$ per cent, or [22] approximately $1\frac{3}{4}$ per cent per annum return on the investment.

Now, it would seem to me that any one using ordinary intelligence would prefer to buy war bonds. And, as I say, it is absurd to imagine that he would receive \$12,260.00 for this equipment 10 years hence. If he receives less than that, if he receives the ordinary depreciated value, he wouldn't even get his money back.

So on any conceivable basis this verdict is entirely unjustifiable by the evidence.

Now I come to the last and final ground for the motion of a new trial, and that is the admission of the testimony of a separate valuation for the equipment and the operating well.

The Court: Mr. Weymann, before you leave the figures, what was the estimate of the value of the personal property on the well by one of the government's witnesses?

It seems to me he gave some figures around \$15,000 or so, but that is just——

Mr. Weymann: I have that here. Mr. Oliver testified that the reproduction cost of the equipment

which was in the well on September 28, 1942, was approximately \$19,000.00.

Mr. Dechter: More than that.

Mr. Weymann: Nineteen thousand and several odd hundred dollars. [23]

Mr. Dechter: \$19,846.85.

Mr. Weymann: That was the reproduction cost as of September 28.

Mr. Dechter: He called that the replacement value.

Mr. Weymann: Yes. In other words, in his estimation that is what it would cost to replace that equipment.

The Court: Did he give any estimate as to the market value of that property?

Mr. Weymann: As of that date?

The Court: Yes.

Mr. Weymann: No, he did not, because he testified that he couldn't separate them; that the property had no market value——

The Court: But the replacement value was \$19,846.00?

Mr. Weymann: That is correct. The testimony, of course, of Mr. Oliver was to the effect that no market value could be realized unless the equipment were removed, and if it were removed, the market value of the lease would be destroyed.

The Court: Of course, what I have in mind is that the jury may have considered that the sale was made as of the date of September 28th, and even taking Mr. Oliver's replacement figures there is some basis there that the government actually took

over, in the hypothetical sale, property which was worth, say, nearly \$19,000.00.

Mr. Weymann: I haven't the slightest doubt, if the [24] court please, that there was a confusion in the minds of the jury.

The Court: Would that be a confusion? Because the government did take that property as of that date, and it was worth that much as of that date, it seems that they may as reasonable businessmen have determined that that was the reasonable market value as of that date of that property.

Well, you go ahead with that other point, because you have made your argument on this point. I thought you were going into all the figures and that is why I asked you about that.

Mr. Weyman: I would like to pursue that phase of it a little further. Mr. Oliver's testimony as to the replacement cost new of that equipment is considerably higher, almost \$1800.00 higher than Mr. Rush's testimony as to the market value of that equipment. Mr. Oliver did not testify as to any deduction for casing or liner which was in the well and which could not be removed.

The Court: I understand that.

Mr. Weymann: So it may well be in this case as in so many cases that the property would have a higher value by abandoning the well and selling the equipment.

The Court: Whatever it was, the jury probably considered that the government took over whatever property he had. [25]

Mr. Weymann: That is correct. There is no question but what it did.

The Court: Whatever was the highest value.

Mr. Weymann: The highest value, and he is entitled to the highest value which could be realized from the property taken.

The Court: Under any circumstances?

Mr. Weymann: Under any circumstances, yes.

The Court: Proceed with your other point.

Mr. Weymann: The other point is this: that in permitting the introduction of separate valuation for the equipment essential to the production of the well, and then the value of the well, assuming the use of that equipment, the defendant is getting double compensation.

I attempted to illustrate that to the jury, evidently with very little effect, but let me use this illustration:

Suppose the government had requisitioned, we will say, a used Rolls Royce automobile from Mr. Block, and he testified that it had a good body, good upholstery, and a very excellent engine in it, and it was good for a hundred thousand miles, and that the value of that was \$2,000.00, let us say, and he established—assuming all of the other facts to be proved—a reasonable value of \$3,000.00 for that automobile as an operating vehicle; then he puts on evidence, “Now, the engine in that automobile could be taken out and sold and [26] it has a market value of a thousand dollars additional”; if he is paid for that engine a thousand dollars, he can’t

be paid \$2,000 for the automobile, because they are integral parts of one operating unit.

Now, an engine is no more essential to an automobile than production equipment is to an oil lease.

As I stated at the very beginning of this argument, an oil lease for which there is no available equipment, or for which equipment cannot be procured at a cost which is economical, is just as valuable as a gold mine on the moon, because when a purchaser purchases this property he determines, "How much is it going to cost me to get out 40,000 barrels of oil on which after paying operating costs I can realize \$13,000.00?" If I have got to pay out \$18,000.00 or \$20,000.00 for the equipment, obviously I am not going to get enough out to make it pay and it is worthless. So it is in this case. I am morally convinced that this jury gave by reason of that evidence of this additional value for equipment, which was also valued in the lease—that the jury went astray on that and gave double compensation, because you can't have an operating well without the equipment, as Mr. Dechter truly said.

The value of the operating well includes the value of that which is necessary to make it so, and then when you give additional compensation for that equipment you are giving double compensation.

Now, in addition to the cases I have cited, if the court please, during our argument on that very question, I would like to cite a number of additional cases if the court cares to take them. *Devou v.*

The City of Cincinnati, 162 Fed. 633, 635. That is a Sixth Circuit case.

Morton Butler Timber Co. v. The United States, 19 Fed. (2d) 884 at 888. That is also the Sixth Circuit.

United States v. Meyer, 113 Fed. (2d) 387.

Vallejo, etc. v. Home Savings Bank, 24 Cal. App. 166.

United States v. 19.86 Acres of Land, 141 Fed. (2d) 344, 348. That is a Seventh Circuit case.

So our position is this, that in permitting those figures of a separate value for this equipment, admittedly essential to the value of the lease,—in permitting those figures to go before the jury and getting them into the jury's minds the position of the government was prejudiced before the jury, and I believe that had a good deal to do with arriving at a verdict which on no other possible basis could be justified.

Now, on the question of the power of the court to grant a new trial there are numerous cases, and I want to refer to just one of them because it is a Ninth Circuit case, an opinion written by the senior judge. That is Murphy, et al. v. United States District Court, 145 Fed. (2d) 1018.

The Court: 145 Fed. (2d) ?

Mr. Weymann: That's right. That was a condemnation [28] proceedings.

The Court: The page number?

Mr. Weymann: 1018.

In that case a motion for a new trial was made by the government on the ground that the verdict

was excessive—that was a Northern District case—and the court held the matter under submission for more than 60 days, and the defendant then objected to the granting of a new trial because the time limitation in the State Court——

The Court: That is a California rule.

Mr. Weymann: It is a California rule, but the Appellate Court, of course, held that was not applicable, and in ruling on that motion the Appellate Court said:

“A Federal District Judge not only has the power and authority but is charged with the duty and responsibility to set aside the verdict of a jury and to grant a new trial when in his judgment and discretion the amount of compensation awarded is excessive.”

I feel that upon a review of the evidence in this case the court cannot but help to arrive at the conclusion that upon any theory, upon any consideration of this evidence, it cannot help but arrive at the conclusion that the verdict of this jury is grossly excessive.

Mr. Dechter: At the outset, your Honor, I would [29] respectfully call the court's attention to Rule 17 on New Trials of the Rules of this court, which provides as follows:

“Within the time provided for in Rule 59(b) of the Federal Rules of Civil Procedure, the applicant shall serve upon the adverse party and file with the clerk a motion for a new trial stating the grounds upon which he relies, and stating the papers on which the application is to be based. If

a ground of the motion be error in law occurring at the trial, the motion shall specify the particular error or errors relied upon; and if a ground be insufficiency of the evidence the motion shall specify the particulars wherein the evidence is claimed to be insufficient.”

It is my contention that the only valid ground set forth in the motion is No. 4; which is the error in law occurring at the trial, and which the government has specified as the receipt of evidence of the component parts of the property taken; that the assignment of the ground of insufficiency of the evidence to justify a finding of the fair market value of \$20,397.00 is equivalent to the assignment of finding that the judgment is unsupported by the evidence, or the evidence is insufficient to support the judgment.

Now, while that particular rule has not been interpreted in any particular case, the exact same language has been [30] interpreted time and time again on appeal where a finding is attacked because the evidence is insufficient, and the courts have held time and time again that you must specify what the evidence was, and in what way the evidence received was insufficient to justify the finding.

But assuming that the court will consider the ground anyway, I feel that in this case the evidence is more than sufficient to support the jury's verdict, and I feel the evidence is sufficient if you eliminated all of the defendant's testimony and only the testimony of the plaintiff was in this particular record. This court gave two standard instructions, which

were approved by the government, that the jury is not bound by the expert opinions of the experts; that their opinions are merely advisory; that if their reasoning does not support the opinion, they do not have to take the opinion and that they can form their own opinion from all of the facts and circumstances presented in the case.

Mr. Oliver testified that the replacement value was nineteen thousand eight hundred some dollars. When he was asked what the fair market value of that equipment was at this time, he just deliberately refused to give an answer; he attempted to give what the salvage value would be 10 years from today, and the court specifically directed Mr. Oliver to answer my question, and if he couldn't answer it [31] to say he couldn't answer it, and he took the out by saying he couldn't answer the question in that way. So the only evidence of his as to the value of the equipment to go before the jury was the value of nineteen thousand eight hundred some dollars. In other words, he was so impressed by his own ability that he refused to deviate from his statement and give an opinion, if he had an opinion, as to the fair market value as of that date.

And, incidentally, both of the government's witnesses separated their valuations exactly the same as the defendant's witness, only instead of doing it by separate witnesses they did it by the same witness. Both Mr. Oliver and Mr. Wents gave the component parts of the equipment. Only Mr. Oliver tried to give the salvage value 10 years hence, and the value of the leasehold, and he admitted that

his opinion of the fair market value of the leasehold at this time was what he estimated the net recovery would be plus the value of the equipment 10 years from now, not as of the date of the taking by the government. Mr. Wents attempted to do the same thing, and my recollection is that the court struck out the testimony of Mr. Wents as to what the value would be 10 years hence, but on cross examination I asked him certain questions as to only four items on the three pages of inventory, to-wit, the four being the rods, the casing, the liner, and the derrick, and based upon his opinion on those items his valuation [32] was \$13,858.88 as of the date of the taking. In other words, what a purchaser or a seller would give and take for that equipment as of September 28, 1942. And when you add the numerous other items, some of which are very substantial, even based on his own figures the value would exceed that of the defendant's own witnesses.

Now, the court will also recall that part of the court's reasoning in separating the value was two-fold: First, based upon the fact that the government had originally only been authorized to condemn the real estate under the original resolution; that the second resolution made almost a year later authorized the taking of the personal property, and the evidence is without contradiction on both sides that all of this equipment it was customary in the oil business to remove and replace, to sell and replace again, with the exception of the casing and the liner, and the court expressed itself that the

easing and the liner should be deemed part of the real estate and the other equipment should be deemed personal property, because there was no contradiction from anybody that that equipment was personal property and could be removed; and under the very terms of the lease the government offered in evidence the lessee was authorized to remove that personal property. Then at the conclusion of the case when the court discovered that there was no difference, even, under our own witnesses as to the market value of the equipment [33] as of October '43 and September '42, the court said in order not to confuse the jury I am going to have them determine the value of the entire thing as of September 28, 1942, and the court instructed the jury to bring in the verdict of the entire property being taken, including the personal property, fixtures or equipment.

I am trying to give the background of that, your Honor. In other words, your Honor was of the opinion all the way through that the dates should be separated, but because of the fact that the values were the same the court decided to have it all valued as of one particular date.

There is no question about the jury not having been properly instructed. As a matter of fact, both sides argued the matter to the jury, and I think we both merely reiterated what was in the instructions, and the jury were fully advised on the matter.

But let's go back to the plaintiff's own testimony. Mr. Oliver gave a productive life to the well of 8 years; Mr. Wents of 10 years. Now, the

government's own exhibit of the production of this well showed for a period of two years prior to the taking, from September, 1940 to September, 1942——

The Court: I don't think it is necessary for you to repeat that. You made that argument to the jury. You had that map there, I believe, in front of you.

Mr. Dechter: In other words, I am trying to illustrate [34] by the government's own exhibit based upon the price of 80 cents a barrel, which was the price that Mr. Oliver and Mr. Wents used, that just the two years alone prior to the taking the well had produced net \$10,915.20, and for the six months period from September, '42 to June, '43 the well had produced for 9 months 6466 barrels which, put on an annual basis, would be 8621 barrels or a net for this particular interest of \$5853.40 for the 70 per cent interest. Just for one year. And I think the jury had a right to take that into consideration, because if you capitalize, for example, the production from September, '42 to June, '43 at \$5853.40 a year you would get a total of \$58,000.00; if you would capitalize the production from September, '40 to September, '42, taking 70 per cent of the total production, it would be \$7640.64, and five times that—in other words, that being for two years it would be something like \$39,000.00.

I think the jury had a right to take those things into consideration. In other words, they weren't bound by the opinion of the witnesses themselves; they had a right to determine for themselves from

all the evidence what their opinion was. As a matter of fact, the jury in these condemnation matters sits more or less as appraisers after hearing the evidence, and as our Supreme Court said in this recent case that went up from Northern California—all that a jury does in a case where there isn't actual evidence of sales and purchases within the immediate time period is arrive at an informed guess after getting all of the information before it.

The government was taking over a going concern in this particular matter; they were taking over a certain oil and gas leasehold which had a value for its mineral content. They were also taking over certain machinery and equipment that they wanted to use. It is exactly the same, in my opinion, as a mine, for example, a coal mine or gold mine: it has a value by itself for the mineral content; you put on machinery and equipment and it adds to that particular value. It costs you so much to get that machinery and equipment. It is just like a farmer buying tractors and machinery to get the crops; the land or the crop has a certain value, but you have to have the machinery and equipment also.

They wanted a going concern, and all of this equipment three years after it was taken was still being used intact without having been changed, according to Mr. Oliver's testimony.

The government in its own complaint separated these particular items. If you take paragraph 10 of the complaint, what is the government seeking to condemn?

“ * * * That the estate or interest in the property hereinafter described which the plaintiff in this action intends and seeks to take, acquire, [36] condemn, hold, and own is: (a) the full fee simple title to the real property hereinafter described, subject, however, to existing easement for public utilities; (b) title to all the personal property and trade fixtures, hereinafter described, free and clear of all liens and encumbrances, located on said real property or on any part thereof, on the 28th day of September, 1942.”

And that personal property so described is the inventory served and filed with the complaint.

Now, when Mr. Block was on the stand and testified he was asked about the separate valuation of, first, the leasehold and the equipment and the overriding royalty—incidentally, I assumed from the motion that no complaint is being made as to that part of the verdict, as to overriding royalty, because nothing is raised in the motion.

The Court: No, it hasn't been presented.

Mr. Dechter: In so far as Mr. Block's testimony is concerned, when he was asked the question about the value of the personal property, and I think Mr. Block showed himself to be very well qualified, he testified \$22,000.00, and there was no objection——

The Court: \$22,500.00, wasn't it?

Mr. Dechter: I am not sure, your Honor.

The Court: Well, it was about that. [37]

Mr. Dechter: And there was no objection made by Mr. Weymann at that time.

The Court: He couldn't very well make an objection to the owner's valuation. I don't think he is to be criticized for that, or that there is to be any inference drawn unfavorable to the government by reason of that.

Mr. Dechter: What I meant, your Honor, was this: That he is specifying as an error the fact that evidence was received of the component parts, and it is a rule of law that evidence even if it is objectionable——

The Court: I beg your pardon. I misunderstood you.

Mr. Dechter: In other words——

The Court: I understand what you mean.

Mr. Dechter: Evidence even if it is objectionable, assuming for the purpose of the argument that he is correct that evidence should not have been received of the component parts, if it goes in at one time without objection, then the courts have held that he cannot raise the point because there is the same evidence in without objection.

The Court: I understand. I had a different idea of what you meant, Mr. Dechter.

Mr. Dechter: The same thing is true of Mr. Rubin; although in Mr. Rubin's case he did make an objection in one part of Mr. Rubin's testimony, but when the question was directly asked Mr. Rubin as to his opinion as to value he [38] failed to make the objection and the answer is made without objection, and it so appears in the record.

On the question of the law of the case, in *Peltonen v. Katahdin Pulp & Paper Co.*, 149 Fed. 282, on the power and duty of the trial court, it is said:

“It is not the duty of the court to set aside a verdict rendered on conflicting evidence, unless it finds that the jury were governed by prejudice, passion, or corrupt motives; and it will not do so in the exercise of its discretion, where it does not appear that the jury disregarded the instructions or failed to consider any part of the evidence.” In case by a District Court——

The Court: I don't think you need go into that part, Mr. Dechter. Any one who has had experience over some years either as a lawyer or a judge on the bench knows that the granting of a new trial in any case upon the insufficiency of the evidence is a matter within the discretion of the court, and the exercise of that discretion must be proper.

Mr. Dechter: That is exactly the law, your Honor.

The Court: In other words, when it says that it doesn't mean that the court may without regard to the facts just simply grant a motion for a new trial or deny it because the court has the discretion, but it is what has been designated as judicial discretion. [39]

I haven't looked at this case that Mr. Weymann has referred to, *Murphy v. United States*, but from what he states, I am sure that is simply an expression of the general rule regarding granting new trials.

It was written by Judge Wilbur, I believe Mr. Weymann said.

Mr. Weymann: I beg your pardon, your Honor. Judge Garrecht.

The Court: I was going to say if it was written by Judge Wilbur I am pretty sure it is in accordance with the California rule, which I think is in accord with the general principle regarding granting motions for new trials.

There is a California case, I think it is the case of *Green v. Soule* in 145 Cal., which I think is an excellent case, setting forth the principles by which a trial court judge should be guided.

One of the cases in the California Reports has gone so far as to say that the parties are entitled to two decisions, two verdicts, when the judge of the court has to decide whether the evidence is sufficient to sustain the verdict of the jury on a motion for a new trial.

This *Green v. Soule*, I think, is an excellent case.

The case of *Hunt v. United Bank & Trust Co.* in 210 Cal. is another excellent decision or opinion that was written by Justice Tyler, and in that case he distinguishes between the [40] consideration of a motion for a directed verdict, a motion for judgment non obstante veridicto, and a motion for a new trial, and what is said in all these cases is what Mr. Weymann has stated as the holding in this *Murphy* case, so I don't think you need take the time to go into that.

What I am afraid of is that the court has taken

more time in its statement than you would have taken probably.

Mr. Dechter: I am glad to hear that, your Honor. That confirms what I would be saying, anyway.

The thought occurs to me that Mr. Weymann in his argument talked about depreciation. Depreciation usually is a bookkeeping entry. Mr. Owens on the stand testified that he had taken out casing and tubing that had been in wells for 10 and 15 years and had resold them for the current second-hand market value, which had an O.P.A. price of something, according to the testimony, 15 or 20 per cent less than new, and used it in oil wells. So, in other words, it is not unusual for equipment to be used in oil wells for a long period of time and still have a usable value in oil wells.

Now, upon the matter of fact of expert opinion, it is not conclusive——

The Court: I think we are all agreed upon the law. I think when we were going over the instruction that was offered on that point, the one that was given, you and Mr. Weymann and the judge of the court were all in accord. [41]

Mr. Dechter: That is correct, your Honor. I had a number of California cases, but I won't read them.

There is a nice remark made by Randolph Paul in his book *Studies on Federal Taxation*. Your Honor will remember he was the Treasury tax counsel for a long time. He says:

“It is a weary task to find fair market value.

The result is not academic. It expresses itself in money deficiencies. Valuation is neither crystal gazing nor geometry, but a serious hard business with economic and social implications of vast significance. One must look in many directions at the same time, invoke a host of details, and yet avoid a microscopic attitude."

That language together with a recent Federal Court decision in 30 Fed. Sup. 425: It is not sufficient ground for a new trial that the verdict is merely against a preponderance of the testimony, or that the court might have arrived at a different result, but the verdict must be manifestly and palpably against the evidence in the case.

On the matter of the separation of the component parts which I think the government itself raised in this case by its own issues in the complaint and by its own witnesses' testimony, I want to call the court's attention to the *City of Oakland v. Schench* in 197 Cal. 456 at page 461.

"If, prior to the institution of the condemnation [42] proceedings, the railroad companies had constructed upon the land embraced within the crossing buildings to be used in their business, it would have been necessary, in ascertaining the just compensation to be awarded, to take into consideration the value of such improvements. There were no buildings in the present case. The inquiry is directed solely to the question of the diminution, if any, in value of the railroad right-of-way."

There there was an easement involved; here there is a profit a prendre involved.

Concerning the fact that derricks and tubing and rods are always treated separately, I think the court can take judicial notice of the fact that our own taxing authorities always separate the mining rights as one classification and the derrick and tubing and rods as personal property in a separate classification, showing what the practice is in the oil industry in California, and that is illustrated by the case of the County of Ventura v. Barry in 207 Cal. 189 at 192, where the court says:

“ * * * The operations of lessees under oil leases contemplates the erection of derricks and other structures of an impermanent character and the sinking of deep wells at large expense, but which derive their main value from the expenditure [43] necessary to their creation but from the oil content of the land into which they penetrate.”

Incidentally, the Klinker case that Mr. Weymann relied on so much, and which was distinguished in that case that came down——

The Court: Was that the Indiana case?

Mr. Dechter: The Klinker case in the Times Building case, a California case, and your Honor will recall that Mr. Weymann made much ado about the fact that in that case the heavy printing presses were treated as part of the real estate of the Times Building; and then that case came down while we were at trial from San Diego, those bank vault cases, which distinguished——

The Court: That is the one I called to your attention?

Mr. Dechter: That is right, and the one we se-

cured a copy of. A close reading of the Klinker case will show that a distinction is made between fixtures as trade fixtures and improvements. In other words, where fixtures by the intent of the owner become permanent parts of the real estate, they become improvements and therefore are treated as part of the real estate; but where there is an intent that they shall be removable, they don't become improvements and they remain personal property or trade fixtures. And in the Klinker case it is said:

“When fixtures become part of the realty, if [44] the land on which the building stands is taken in whole or in part for the public use, the owner is entitled to have the fixtures considered in determining the amount of his compensation.”

This is the Klinker case itself. Then it goes on to say at page 209:

“It is, of course, true that the manner in which the fixtures are annexed, the purpose for which the premises are used, and the intention of the persons who made the annexation, are all to receive weight in settling this issue. It is also true that the intention of the parties, where mutual rights are involved, is of controlling importance, such as in the case of a lessor and lessee, or vendor and vendee under a conditional sales contract. But where, as here, the owner's own conduct alone is to be reviewed, the nature and adaptability of the machinery and the manner of its installation would practically control the question of intent as against a vendor or a condemnor. Here we have not only the

manner of annexation of the fixtures and the purpose for which the premises were used, but we have the acts and conduct of the owner in installing these fixtures and, when viewed as a whole, we are unable to escape the conclusion [45] that so much of the fixtures as are denoted in the record by the term 'processing equipment' are, actually or constructively, an improvement of the real property." Then at page 211:

"Neither is appellant in a position to question the ruling of the court in allowing the so-called structural value of the building to be shown by it, and, after so doing, limiting its purpose to corroboration of the evidence of market value and the formation of a basis for hypothetical questions to be propounded to experts upon the question of market value. The general rule is against the admission of this class of evidence for any purpose. The market value of the land, together with the improvements thereon, viewed as a whole and not separately, is the general rule. * * * Exceptions to this general rule might be allowed where, under peculiar circumstances not here present, as by reason of the nature of the improvement itself, no other criterion would be appropriate for establishing the market value of the property other than the structural value or the reconstruction cost. The case of *Joint Highway Dist. No. 9 v. Ocean Shore R. Co.* (128 Cal. App. 743) seems to be an illustration of the [46] exception."

In that particular case the court said at pages 759 and 760:

“Appellant further states that the market value ‘cannot be based on cost of reproduction, plus appreciation, less depreciation.’ There is some conflict of authority on the question of the admissibility of evidence to show such cost of reproduction, but we believe that when it appears that property is improved so as to make it peculiarly adaptable for its highest available use and there may be said to be a market for the property for such use, the cost of reproduction of such improvements becomes a factor in the determination of market value and to that extent the opinions of the witnesses may ‘be based on’ such cost. This does not mean, however, that such cost of reproduction is the market value of the land, for other factors, including demand, enter into the ultimate determination of market value.” At page 765:

“We may refer to the testimony of the witness Butler, who considered the cost of reproduction but arrived at a market value far below such cost of reproduction. It was entirely proper under the [47] circumstances for said witness to give consideration to such cost as a factor in determining market value.” At pages 766 and 767:

“We may further state that much of the alleged objectionable testimony of these witnesses had to do with the strategic location of the land and the nature of the improvements thereon, tending to show its availability for transportation purposes. Under the circumstances in the present case we believe that such testimony was proper on direct examination. We have found no authority presenting

facts on all fours with those before us, but the facts found in *North Shore R. Co. v. Pennsylvania Co.*, 251 Penn. 445, are somewhat similar. The decision in that case supports the view that testimony of the character referred to is admissible. Appellant insists that such testimony was inadmissible, but this argument, like many others advanced by appellant in the briefs, is based upon the premise that there was no market for the property for transportation purposes. This argument falls, for, as pointed out above, there was sufficient evidence to establish the marketability of the land for such purposes." In other words, even in the case of improvement there is [48] an exception to the rule where improvements may be separately valued. Here we have a case which does not involve improvements in the legal sense of the word, but involves personal property which can be moved off—which the general custom is may be removed. Then there are other cases from other states:

Evidence of value of timber or of minerals or of anything on or in the land which would make it more valuable is admissible. Citing cases from Kentucky, Minnesota, New Mexico and New York, the New York case being 234 N. Y. 208.

Where land is improved and the improvements had an intrinsic value which must be added to the land in order to ascertain the market value as a whole, evidence of the separate value of the improvements is admissible. Citing cases from Ohio, - Rhode Island and Texas, the Texas case being 126 Texas, 604, *State v. Carpenter*.

In the New York case of *In re Waterfront*, 219 New York Sup. 353, the court says:

“Where improvements on land taken by eminent domain have an intrinsic value which must be added to the value of the land in order to ascertain the value of the whole of the land and the value of such improvements may be considered separately and then added together.”

On the matter of excessive damages, I have set forth [49] the general rule by numerous cases, and I feel embarrassed to even mention it. I know your Honor is familiar with that rule, that unless the verdict just shocks the conscience and is unquestionably influenced by passion, prejudice, corruption, or wilful disregard, that that is not a ground for a new trial. There are just numerous cases on that score.

In short, your Honor, I believe that the case was fairly tried, the jury was properly instructed, and as I said before if we eliminated all of the defendant's testimony there would still be sufficient testimony in the record to support the jury's verdict.

Mr. Weymann: May I reply briefly?

With all due respects to Mr. Dechter, it does seem to me that discussion of real property or personal property really confuses the issue, and I may myself have unintentionally contributed to that confusion. After all, what we are considering here is the compensation for property taken. The question of the relation between landlord and tenant, lessor and lessee, vendor and vendee, as to the rights of

the removed property have no place in this proceeding, to my mind.

It is true that equipment on an oil well is not a permanent fixture; it is true that it may be removed. We don't contest that. What we object to is not the valuation of that equipment when we are through using it, but the valuation now separately and apart from the lease to which it [50] gives value. That any value of that equipment apart from the lease cannot be realized until the lease is abandoned, without destroying the value of the lease.

Reverting again to my illustration of this automobile, this hypothetical automobile. Of course, the engine of itself has a value. You can take it out of the automobile and sell it. But then you won't have an automobile to be valued.

When we are through using it, the engine also has a value; the body, the coach may have some value—nominal, and the engine may be resold. But you can't sell the engine and get a market value for it without destroying the value of the automobile.

That is the long and short of it from our point of view.

Reference was made to our pleadings. Necessarily we had to specify personal property in order to comply with the California rules on property. If we had condemned only real property the question could be raised very properly, and has been raised in some instances, that there was no authority to take equipment. But that does not go to the ques-

tion as to whether or not this equipment is an integral part of an oil lease, which constitutes an oil lease and without the use of which there is no valuation, no value for the lease except as potential oil land, and then to determine the value of that potential oil land it is necessary to determine how much it is [51] going to cost to equip that lease with the necessary machinery to get the product from it.

Now, counsel cited a New York case, the Water-front case, as to separate valuation of land and the buildings thereon. You can still use the land even though you take the building off and never put a building on, because naked land has a market value apart from the buildings. The buildings add to the value of it. But you can't value a hotel property as a hotel property when you take the buildings off the land. You have got wreckage, you have got used building material, and you have got a vacant lot when you separate them. So it is with an oil well.

We concede that some value may be recovered for this equipment, but it cannot be recovered until the possibilities of the lease have been exhausted. You can't have both at the same time.

Reference was made to the court deciding that they should both be valued together by the jury. Well, the instruction doesn't bear out counsel's argument, because the court said: You are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary

part of said well in the production of oil therefrom.

I think that correctly states the situation that there is no value to an oil lease without that equipment, and therefore that separate valuation results inevitably in a double [52] compensation.

Counsel again said the government was taking over a going concern this morning in his argument. A going concern is not potential oil land; a going concern isn't oil well equipment. If there weren't any oil wells the equipment wouldn't have any value except as junk. If there wasn't any equipment the potential oil lands wouldn't have any value except as bare land.

The Court: Read that last statement, please.

(The record was read.)

The Court: You didn't quite mean that, did you?

Mr. Weymann: If there were no wells on which the equipment could be used, it certainly wouldn't have any value as oil well equipment, that is what I meant.

The Court: Suppose you had the oil well equipment there and no oil well, it would still be oil well equipment and could be valued as such.

Mr. Weymann: In other words, the possibility of the use of that for the purpose for which it was designed must exist. Perhaps I don't make myself clear. In other words, if all the oil throughout this entire country, all of the fields were exhausted, there would be no use for equipment. In other

Court are too reluctant to exercise their power of granting a new trial for insufficiency of the evidence, and too much inclined to acquiesce in a verdict of the jury which does not meet with their own approval. There is a clear and obvious distinction between the duty of a trial court and the duty of an appellate court with respect to the decision of such questions, and it is well established by the decisions of this court. The trial court cannot rest upon a conflict in the evidence, but must weigh and consider the evidence for both parties, and determine for itself the just conclusion to be drawn from it. 'Where the decision is against the weight of the evidence it is the duty of that court to grant a new trial.' (Giving some citations.) 'If the judge is not satisfied with the verdict, and is convinced that it is clearly against the weight of the evidence, it is his duty to set it aside, even though there may have been some conflict in the testimony. He has had the same opportunity as the jury to observe the manner of the witnesses, and to decide upon their credibility, and it is his duty [56] to see that the verdict is not clearly against the weight of the evidence. He just exercise a wholesome and discreet supervision over the jury in this respect.' "

And there is some more along that line, but I shall not read it.

The judge states in the opinion:

"He must be clearly satisfied that the verdict is wrong; otherwise, he should let it stand. But in considering the question upon the motion he must act upon his own judgment as to the effect

of the evidence. The parties are entitled to the judgment of the jury in rendering a verdict, in the first instance; but upon a motion for a new trial they are equally entitled to the independent judgment of the judge as to whether such verdict is supported by the evidence."

I read quite a little from that decision, but it seems to me that it is all very proper in consideration of a motion for a new trial.

Hunt v. United Bank and Trust Company is at page 108 in 210 Cal.

Mr. Weymann: What was that citation again, if the court please?

The Court: Hunt v. United Bank and Trust Company, 210 [57] Cal. beginning at page 108.

I think, considering all of the evidence, that the court would not be justified in setting aside the verdict of the jury, so the motion is denied.

I may say that I believe Mr. Dechter has properly referred to the action of the court in regard to the difference in the two dates, that is, September 28, 1942, and October, 1943. I was led to believe by a statement—I have forgotten who made it—at the pre-trial conference that there would be a considerable difference in the valuation of the personal property between those two dates. You have that in mind?

Mr. Dechter: That is correct, your Honor, I have that impression.

The Court: But as the evidence developed from a number of the witnesses I was convinced that there was no difference. I think the jury could not

have been confused upon that point. In any event, the court stated its views and the motion is denied.

Mr. Dechter: Notice waived, Mr. Weymann?

Mr. Weymann: Notice waived.

The Court: I don't believe our rule has been tested yet. I think your construction of it is probably correct, but the court didn't desire to decide the very important point on that. [58]

Mr. Dechter: It is the same way in the Superior Court, the judges always want to hear it on the merits.

Mr. Weymann: I thought I specifically specified that objection, because to carry it out in detail would be simply to review the evidence.

The Court: Well, court is now recessed. [59]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 20th day of October, A.D. 1945.

/s/ SAMUEL GOLDSTEIN,
Official Reporter.

[Endorsed]: Filed Mar. 22, 1946.

[Endorsed]: No. 11282. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, for the use of Reconstruction Finance Corporation, a Federal Corporation, acting in behalf of Defense Plant Corporation, a Federal Corporation, Appellant, vs. Sam Block, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 25, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11282

UNITED STATES OF AMERICA, for the Use of
RECONSTRUCTION FINANCE CORPO-
RATION, a Federal Corporation, Acting in
Behalf of DEFENSE PLANT CORPORA-
TION, a Federal Corporation,
Plaintiff-Appellant,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS AN-
GELES, STATE OF CALIFORNIA; SAM
BLOCK, et al.,

Defendants.

SAM BLOCK,

Defendant-Appellee.

STATEMENT OF POINTS AND DESIG-
NATION OF RECORD

To the Clerk of the United States Circuit Court of
Appeals, for the Ninth Circuit, and to Dechter,
Hoyt, Pines & Walsh, Attorneys for Sam Block,
Appellee.

In accordance with the provisions of Rule 19,
Subdivision 6, (C.C.A. 9), the appellant, United
States of America, files this, its Statement of Points
and Designation of Record on Appeal from the

Judgment entered September 17, 1945, in favor of the defendant Sam Block:

1. Appellant adopts on this appeal the Statement of Points on Appeal filed with the Clerk of the trial court, as incorporated in the Record on Appeal;

2. Appellant desires to have printed the entire record, subject to deletions and modifications as set forth in the written stipulation between appellant and appellee which is included in the record, as certified by the trial court.

Dated: This 25th day of March, 1946.

EUGENE D. WILLIAMS,
Special Ass't. to the Attorney
General.

By /s/ A. WEYMANN,
Attorney for Appellant,
United States of America.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed March 27, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION FOR CONSIDERATION OF
ORIGINAL EXHIBITS AND ORDER DIS-
PENSING WITH PRINTING.

Appellant, United States of America, hereby applies to this Honorable Court for the considera-

tion of plaintiff's original Exhibits No. 6 and No. 9, heretofore forwarded to the Clerk of this Court, pursuant to Rule 75(i), F.R.C.P., on this appeal, and for an order dispensing with the reproduction or printing of these exhibits in the record on appeal.

This application is based on the affidavit of August Weymann, verified the 27th day of March, 1946, and the stipulation of the attorneys for appellee, both hereto annexed.

Dated: This 27th day of March, 1946.

/s/ EUGENE D. WILLIAMS,

Special Assistant to the Attorney General, Attorney for Plaintiff-Appellant.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION FOR CONSIDERATION OF
ORIGINAL EXHIBITS, AND DISPENS-
ING WITH PRINTING.

It Is Hereby Stipulated and Agreed, by the attorneys for the appellee, Sam Block, that the appellant, United States of America, may apply to the Court for an order dispensing with the reproduction or printing of plaintiff's Exhibits No. 6 and No. 9, and that the Court may consider the original of said exhibits as though set out in the printed record.

Dated: This 27th day of March, 1946.

DECHTER, HOYT, PINES &
WALSH,

By /s/ B. S. HOYT,
Attorneys for Appellee, Sam
Block.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR CONSIDERATION OF ORIGINAL
EXHIBITS ON APPEAL.

State of California,
County of Los Angeles—ss.

August Weymann, being first duly sworn, says:

That he is a Special Attorney in the Lands Division, Department of Justice, having immediate charge of the proceeding in which the above appeal is taken, and is familiar with the facts herein set forth;

That Plaintiff's Exhibit 6 is a large map of the area included in the condemnation proceeding in which this appeal is taken, showing the subdivided area on which the various oil leases, including that of the appellee, Block, were located; that said map is approximately 48 x 54 inches, and shows in detail the various parcels of land and leasehold estates in the area; that by reason of the size of this map it is not practicable to have it reduced for printing

in the record so as to make it legible, and that, therefore, the major portion of the area shown on the map is not involved in this appeal.

That Plaintiff's Exhibit 9 is a production graph showing a decline of production from the subject well, which was used and introduced for illustrative purposes only, and that only the original of the graph is in existence; that it was made large enough for the jury to see from a blackboard; that in order to reproduce it for printing in the record it would have to be reduced to such an extent as to make it practically illegible.

Wherefore, appellant prays an order of the Court for the consideration of the originals of the above said exhibits on this appeal and dispensing with the printing or reproduction thereof in the printed record on appeal.

- A WETMANN

Subscribed and sworn to before me, this 17th day of March, 1948.

[Seal]

ARTHUR G. McLAY,

Notary Public in and for San
County and State.

By Commission Expires: 11-27-49

[Title of Circuit Court of Appeals and Cause.]

ORDER DISPENSING WITH THE REPRODUCTION OR PRINTING OF EXHIBITS AND PROVIDING FOR THE CONSIDERATION OF THE ORIGINALS.

Upon application of appellant, United States of America, the stipulation of appellee, Sam Block, and the affidavit of August Weymann, verified the 27th day of March, 1946, and good cause appearing therefor.

It Is Ordered, that Plaintiff's Exhibits 6 and 9 may be omitted from the printed record in the above-entitled appeal, and that the said exhibits may be considered by the Court in their original form as though set out in the printed record.

Dated: This 28th day of March, 1946.

/s/ ALBERT LEE STEPHENS.

Judge, United States Circuit
Court of Appeals.

[Endorsed]: Filed March 29, 1946. Paul P. O'Brien, Clerk.



No. 11232

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA, FOR THE USE OF RECON-
STRUCTION FINANCE CORPORATION, A FEDERAL COR-
PORATION, ACTING IN BEHALF OF DEFENSE PLANT
CORPORATION, A FEDERAL CORPORATION, APPELLANT

v.

SARA BLOCK, APPELEE

CAME FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL
DIVISION

BRANCH FOR THE UNITED STATES

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FILED

AUG 8 - 1946

SALL P. CORMAN



INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statement.....	3
Specification of errors.....	10
Argument:	
I. The improvements used in producing oil such as well casings and derricks were taken in September 1942.....	21
A. The improvements were condemned as of September 28, 1942, under the original complaint.....	21
B. In any event the improvements were condemned as of September 1942 under the amended complaint....	27
II. The trial court erred in admitting and in refusing to strike separate evidence of the market value or reproduction cost of the oil well improvements.....	31
III. The verdict and judgment are not supported by evidence....	35
Conclusion.....	40

CITATIONS

Cases:

<i>Bank of Edenton v. United States</i> , 152 F. 2d 251.....	28
<i>Big Sespe Oil Co. v. Cochran</i> , 276 Fed. 216.....	21
<i>Cain v. Whiston</i> , 58 Cal. App. 2d 738, 137 P. 2d 479.....	22
<i>Campbell v. Johnson</i> , 167 Fed. 102.....	28
<i>City of Los Angeles v. Hughes</i> , 202 Cal. 731, 262 Pac. 737.....	24
<i>City of Los Angeles v. Klinker</i> , 219 Cal. 198, 25 P. 2d 826.....	24, 32
<i>Cortelyou v. Baker</i> , 182 Cal. 168, 187 Pac. 417.....	21
<i>Dauch v. Ginsburg</i> , 214 Cal. 540, 6 P. 2d 952.....	24
<i>Devou v. City of Cincinnati</i> , 162 Fed. 633.....	31
<i>Jackson v. New York</i> , 213 N. Y. 34, 106 N. E. 758.....	26
<i>Kinter v. United States</i> , C. C. A. 3, June 7, 1946.....	31
<i>Meadows v. United States</i> , 144 F. 2d 751.....	31
<i>Midland Oil Fields Co., Ltd. v. Rudneck</i> , 188 Cal. 265, 204 Pac. 1074.....	32
<i>Morton Butler Timber Co. v. United States</i> , 91 F. 2d 884.....	31
<i>People v. Ganahl Lumber Co.</i> , 10 Cal. 2d 501, 75 P. 2d 1067.....	32
<i>People v. Klopstock</i> , 24 Cal. 2d 897, 151 P. 2d 641.....	24, 25
<i>R. Barcroft & Sons Co. v. Cullen</i> , 217 Cal. 708, 20 P. 2d 665.....	22, 24
<i>Reconstruction Finance Corporation v. County of Beaver</i> , 90 L. Ed. (Adv.) 919.....	25
<i>Roberts v. New York City</i> , 295 U. S. 264.....	39
<i>Rollins and Presbrey v. United States</i> , 23 C. Cls. 106.....	30
<i>San Diego Trust & Savings Bank v. San Diego County</i> , 16 Cal. 2d 142, 105 P. 2d 94.....	24

Cases—Continued

	Page
<i>Shoshone Tribe v. United States</i> , 299 U. S. 476.....	29
<i>Southern California Tel. Co. v. State Board of Equalization</i> , 12 Cal. 2d 127, 82 P. 2d 422.....	23
<i>Trabue Pittman Corp. v. County of Los Angeles</i> , 28 Adv. Cal. 1, 168 P. 2d 156.....	24
<i>United States v. Bechtold Co.</i> , 129 F. 2d 473.....	25, 31
<i>United States v. Carey</i> , 143 F. 2d 445.....	28
<i>United States v. Certain Parcels of Land</i> , 62 F. Supp. 1017.....	26
<i>United States v. Honolulu Plantation Co.</i> , 122 Fed. 581.....	37
<i>United States v. Lynah</i> , 188 U. S. 445.....	28
<i>United States v. Meyer</i> , 113 F. 2d 387.....	31
<i>United States v. 19.86 Acres of Land in East St. Louis</i> , 141 F. 2d 344.....	25
<i>United States v. Petty Motor Co.</i> , Nos. 77-83, Oct. Term, 1945, 90 L. Ed. (Adv.) 526.....	27, 37
<i>United States v. Rogers</i> , 255 U. S. 163.....	28
<i>United States v. 685.2 Acres of Land in Lake County</i> , 146 F. 2d 998.....	35
<i>United States ex rel. Texas Cement Co. v. McCord</i> , 233 U. S. 157....	28
<i>United States ex rel. T. V. A. v. Powelson</i> , 319 U. S. 266.....	25
<i>Vallejo, etc. R. R. Co. v. Home Sav. Bk.</i> , 24 Cal. App. 166, 140 Pac. 974.....	32
Constitution, Statutes and Codes:	
U. S. Const., Amend. V.....	25
Act of August 1, 1888, c. 728, 25 Stat. 357, as amended, 40 U. S. C. sec. 258.....	26
Act of February 26, 1931 (Declaration of Taking Act), 46 Stat. 1421, 40 U. S. C. Sec. 258 (a).....	4
Cal. Civ. Code:	
Sec. 658.....	22, 23
Sec. 660.....	22, 23
Cal. Code Civ. Proc:	
Sec. 700a.....	21
Sec. 1246.1.....	31
Sec. 1872.....	32
Cal. Bus. & Prof. Code:	
Sec. 7043.....	22
Sec. 7046.....	23
Cal. Publ. Res. Code, Sec. 3233.....	23
Publ. No. 109, 79th Cong., 1st sess., June 30, 1945.....	3
Miscellaneous:	
1 McAdam, Landlord and Tenant (5 ed., 1934), sec. 10, pp. 23-25..	26

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11282

UNITED STATES OF AMERICA, FOR THE USE OF RECON-
STRUCTION FINANCE CORPORATION, A FEDERAL COR-
PORATION, ACTING IN BEHALF OF DEFENSE PLANT
CORPORATION, A FEDERAL CORPORATION, APPELLANT

v.

SAM BLOCK, APPELLEE

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL
DIVISION*

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court wrote no opinion.

JURISDICTION

This is a suit by the United States to condemn land in Los Angeles, California, under authority of section 5d (5) of the Reconstruction Finance Corporation Act of January 22, 1932, c. 8, 47 Stat. 5, as added by the Act of March 27, 1942, c. 198, 56 Stat. 174, 15 U. S. C. sec. 606b (5), and Title II of the Second War Powers Act of March 27, 1942, c. 199, sec. 201,

56 Stat. 176, 177, 50 U. S. C. App. sec. 632, as extended by Executive Order 9217, August 7, 1942, 7 F. R. 6177, 50 U. S. C. App. following sec. 632. The district court had jurisdiction under Title II of the Second War Powers Act, *supra*, and section 1 of the General Condemnation Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C. sec. 257. The judgment appealed from was entered September 17, 1945 (R. 45-51). The Government's motion for a new trial was denied on October 2, 1945 (R. 54). Notice of appeal was filed December 28, 1945 (R. 57). This Court has jurisdiction of the appeal under section 128 of the Judicial Code, as amended, 28 U. S. C. sec. 225 (a).

QUESTIONS PRESENTED

The United States condemned an area of land constituting a producing oil field. The questions are presented—

1. Whether the condemnation petition, in describing designated "lands", included the well casings, derricks and other fixtures comprising the operational equipment on the land installed and used for the extraction of oil and, if not, whether an amendment to the petition specifically describing such operational equipment related back to the date of taking the land.

2. Whether the trial court erred in admitting and in refusing to strike separate evidence of the market value or reproduction cost of such casing, derrick, and other fixtures comprising the operational equipment.

3. Whether the verdict and judgment entered thereon are supported by competent evidence.

STATEMENT

This is a suit by the United States, for the use of Reconstruction Finance Corporation, acting in behalf of its subsidiary, Defense Plant Corporation,¹ both federal corporations, to condemn real property in the City of Los Angeles, California. The property, consisting of a largely depleted oil field known as the Playa Del Rey field, was taken for use as a natural gas storage reservoir (R. 24). The field comprises 278 parcels,² occupied by over 40 wells (cf. R. 31-33). Involved here are parcels designated as numbers 87 and 103, which were subject to an oil lease held by appellee Block and were occupied by a well known as Block Well No. 10, formerly Colly Well No. 1 (R. 43). These parcels are parts of blocks numbered 13 and 14 of Tract No. 9809, as shown in Los Angeles County records (R. 42).

On September 18, 1942, the Board of Directors of Reconstruction Finance Corporation, at the request of Defense Plant Corporation, adopted a resolution to request the Attorney General to institute condemnation of described "lands," the Playa Del Rey field (Pltf. Exh. 1, R. 273). On October 19, 1942, an amendatory resolution was adopted, providing for

¹ This corporation was merged with the Reconstruction Finance Corporation by Publ. No. 109, 79th Cong., 1st sess. (June 30, 1945).

² So far as practicable, enumerations of parcels and parties not involved on this appeal have been omitted from pleadings and orders in the record on appeal. However, the record as printed does not indicate where such omissions have been made.

execution of a declaration of taking and estimating just compensation at \$740,469 (Pltf. Exh. 2, R. 73). Pursuant to request made on September 19, 1942, (R. 80) the Attorney General on September 28, 1942, filed a complaint to condemn the full fee simple title, subject to existing public utility easements, of "lots, pieces or parcels of land" described by lot and block numbers (R. 2). An order for immediate possession was requested and entered on the same day, describing the property in the same terms (R. 11), and on the next day Defense Plant Corporation took possession of the land and of the oil wells thereon, including the derricks, casing, tubing in the wells, pumping machinery and all other fixed equipment (R. 33). On October 26, 1942, the United States filed its declaration of taking, executed by Reconstruction Finance Corporation, pursuant to the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. sec. 258a (R. 14).

Question was raised as to whether the derricks and other oil well equipment were included within the original resolution and complaint. Accordingly, on October 4, 1943, the directors of Reconstruction Finance Corporation adopted a resolution amending their resolution of September 18, 1942, by enumerating and expressly including the structures and improvements attached to the land (Dft. Exh. B, R. 276). Pursuant thereto an amended complaint was filed on January 12, 1944 (R. 22), expressly including and enumerating the same improvements, referring to them for purposes of identification as "personal property and trade fixtures," but preserving the conten-

tion that they were in fact part of the real estate (R. 28). Defendant Block filed his amended answer on June 29, 1945 (R. 41), alleging that taking of the personal property was not authorized or requested until about October 24, 1943. He alleged that his oil lease on parcels 87 and 103 was worth \$35,000; that he also owned royalty rights of $10\frac{7}{12}\%$ in the production from those parcels, worth \$6,500; and that the personal property and trade fixtures owned by him were worth \$20,401.01 on October 24, 1943, and January 12, 1944.

The case came on for trial on July 24, 1945, as to the interests of appellee Block. Preliminary hearing was had (R. 69-122) on appellant's contentions that the oil well improvements were within the scope of Reconstruction Finance Corporation's resolutions of September 18 (Pltf. Exh. 1, R. 273) and October 19, 1942, (Pltf. Exh. 2, R. 73) and the original complaint (R. 2), although those referred in terms only to "lands," and that in any event the amendatory resolution of October 4, 1943 (Dft. Exh. B, R. 276), and the amended complaint filed January 12, 1944 (R. 22), adopted and ratified the action of Defense Plant Corporation in taking possession of the improvements along with the land on September 29, 1942. Appellee contended that taking of the improvements was not authorized or effective until the resolution of October 1943 was adopted (R. 41-42). Appellant, in support of its second contention, that the resolution of October 1943 was a retroactive ratification of the prior seizure of improvements, offered in evidence a telegram from the secretary of Reconstruction Finance

Corporation stating that the resolution was so intended (Pltf. Exh. 3 for identification, R. 77). That evidence was excluded by the court on the ground that it was a statement of a conclusion as to the legal effect of what had been done (R. 76). That ruling is specified as error on this appeal. After this argument the court proceeded with the taking of evidence without announcing any ruling on the question of whether the original taking of land included the improvements. However, its subsequent rulings in the course of the trial were predicated on its conclusion that the improvements were separately taken at a later date than was the land on which they stood (cf. R. 223).

Appellee Block was his own first witness (R. 134-175). He testified that his leasehold, which was subject to a landowner's and overriding royalty of 30% of production (R. 132), was worth \$35,000 in September 1942 (R. 139). He testified that the value of the improvements (including two tanks inadvertently omitted from the list attached to the amended complaint) was \$22,000 and was not included in the \$35,000 valuation of the lease (R. 139). However, his valuation of the lease was based on anticipated production (R. 141), which, of course, involved use of the improvements (R. 149, 151). He conceded that his valuation was merely what the lease was worth to him, rather than what a willing buyer would pay for it in the market (R. 157).

Mr. Rubin, appellee's next witness (R. 175-182), testified that he thought that he had valued the improvements inventoried in the amended complaint at

\$22,000 as of October 1943 (R. 178). The court overruled appellant's objections that the improvements were taken in September 1942 so that valuation should be as of that time, and that it was improper to receive evidence of their value apart from the value of the leasehold interest as a whole (R. 177).

Appellee next produced Mr. Crown (R. 182-186, 229-264), who valued the leasehold, excluding the improvements, at \$11,000 (R. 185), to which he would add the salvage value of removable casing (R. 230-231). His valuation was as of September 1942 (R. 184, 231) and was based on his estimate of future production (R. 242-247, 250-251) and his opinion of the market demand for such investments (R. 248).

Appellee's third witness, Mr. Rush (R. 209-229), valued the improvements as of October 1943 at \$18,000 (R. 211-212). Appellant's objections to separate valuation apart from the leasehold as a whole and to valuation at a date other than September 1942 were overruled by the court, which stated that the sole justification for receiving evidence of the separate value of the improvements was that they were taken on a later date than the interests in the land (R. 211-212; cf. R. 223). Mr. Rush then testified that the value of the improvements would have been the same in September 1942, and that only \$12,260 worth of them could be recovered (R. 226).

For appellant, Mr. Oliver (R. 279-394) valued the leasehold at \$5,650 (R. 284), as of September 28, 1942. His valuation of the lease included \$3,150 for recoverable oil and \$2,500 net salvage value of equipment

(R.284). His estimate of future oil production was derived from the past record of the well, shown by Plaintiff's Exhibit 8 (R. 292-293). He testified that the value of the operational equipment was substantially the same on October 4, 1943, as on September 28, 1942 (R. 320).

Appellant's second witness, Mr. Wents (R. 394-423), fixed the market value as of September 28, 1942, of future oil production at \$2,700 for the leasehold (R. 401). Including the ultimate net salvage value of the improvements, he reached a value for the leasehold of \$5,690 (R. 398).

In rebuttal, appellee introduced Mr. Owens, who testified that the cost of abandonment of the well would be \$800 (R. 427), but admitted that it would cost from \$800 to \$1,000 additional to cover the holes and clean up the property (R. 429-430), which was required by the terms of the lease (Pltf. Exh. 7, R. 278).

Evidence was also introduced as to the value of the $10\frac{7}{12}\%$ royalty interest which Mr. Block had acquired, the parties agreeing that this interest should be valued separately from the lease (R. 129-130, 133). For the condemnee, Mr. Block valued it at \$6,000 (R. 140), Mr. Crown at \$3,120 (R. 231). For the Government, Mr. Oliver valued this interest at \$1,388 (R. 283) and Mr. Wents at \$1,168 (R. 398). The jury valued this interest at \$1,857 (R. 490).

At the conclusion of the evidence appellant moved to strike all testimony as to market value of the improvements as of October 4, 1943, and requested that the jury be instructed to disregard such testimony (R. 431-432). Both motions were on the ground that the

evidence duplicated values included in the appraisals of the leasehold which were based on the value of oil to be produced by use of the same improvements (R. 431-432). The motion was denied (R. 433). The court's only instruction to the jury on this point was as follows (R. 477) :

In determining the fair market value of the leasehold estate and the production facilities and equipment used in connection with the operation of the well, you are to determine such value on the basis of the use of the facilities and equipment as an integral and necessary part of the said well in the production of oil therefrom.

The verdict, which had been approved as to form by counsel for both parties (R. 435), was as follows (R. 490) :

We, the Jury in the above-entitled case, find the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all the production facilities and equipment used on said date in the operation of the well, to be the sum of \$20,397.00.

We further find the market value as of September 28, 1942, of the $10\frac{7}{12}$ per cent overriding royalty of the defendant Sam Black to be the sum of \$1,857.00.

Total market value of the foregoing as of September 28, 1942, is \$22,254.00.

Judgment was entered thereon on September 17, 1945 (R. 45). On September 21, 1945, appellant filed a motion for new trial (R. 51), on the ground that the verdict was not supported by the evidence and repeat-

ing the objection to admission of evidence of the separate value of the improvements (R. 52). That motion was denied by the court on October 2, 1945 (R. 54). Notice of appeal was filed December 28, 1945 (R. 57).

SPECIFICATION OF ERRORS

1. The district court erred in admitting separate evidence of the market value or reproduction cost of improvements affixed to the land condemned, and in overruling appellant's objections thereto, as follows:

(Testimony of Abraham Rubin.)

Q. And what in your opinion was the fair and reasonable market value of that personal property?

MR. WEYMANN. Just a moment, please.

MR. DECHTER. As of——

MR. WEYMANN. Pardon me. I am going to have an objection before the question is asked.

MR. DECHTER. As of October of 1943.

MR. WEYMANN. I object to the question as incompetent for two reasons. In the first place the date of the valuation is not of October, 1943; on the second ground that the property taken is to be valued as a whole, as a unit, and that it is improper to introduce evidence of separate elements which go to make the valuation of the entire property taken.

THE COURT. You make no objection then, Mr. Weymann, that the date of January 12, the filing of the amended complaint, is not used in any way?

MR. WEYMANN. No. I make no objection to that. I make objection, of course, to the date of October, 1943.

The COURT. Yes. Your position is that it should be September 28, 1942?

Mr. WEYMANN. Yes, of the valuation of that property as a whole without separate valuation of any of the elements that go into it.

The COURT. The objection is overruled.

Mr. WEYMANN. May I have an exception, please?

The COURT. Yes.

The WITNESS. Do you want the answer in dollars and cents?

Mr. DECHTER. Yes.

The WITNESS. I don't remember the exact total, but I went over those figures at that time and it seemed to me it was over \$22,000. I can't give you the exact figure.

Q. By Mr. DECHTER. It was about \$22,000?

A. Yes; over \$22,000 was the total as near as I can recall.

*

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*

Mr. WEYMANN. May we have an exception to all questions along this line?

The COURT. Now, Mr. Weymann, I think to make an objection now such as that would not quite reach the question which is now before the court or before the witness for his answer. I have no objection if it is agreeable to Mr. Dechter that it be understood that your general objection is to go to all of these questions.

Mr. WEYMANN. That is the purpose of the objection.

Mr. DECHTER. I will so stipulate, your Honor.

The COURT. Yes. The general objection you made that you referred to heretofore?

Mr. WEYMANN. That is correct. I simply don't want to be objecting to every particular question.

The COURT. I think that is very proper, but I want to be sure it refers only to the general objection.

Mr. WEYMANN. To the general objection, that is correct.

The COURT. The objection is overruled.

Mr. WEYMANN. Exception, please.

(R. 176-179.)

(Testimony of J. D. Rush.)

Q. You have heretofore been shown an inventory of personal property located on what is known as Block Oil Company Well No. 10, being pages 1 to 4, inclusive, of Plaintiff's Exhibit C of Plaintiff's Amended Complaint? A. Yes, sir.

Q. And you have been asked to look that over for the purpose of expressing an opinion as to the fair market value thereof? A. Yes, I have.

Q. And do you have an opinion as to the fair market value of that property as of October 1943? A. Yes.

Q. And will you please state to the court and jury what that opinion is?

Mr. WEYMANN. Just a moment, please. I object to the testimony on the ground that it is incompetent, irrelevant and immaterial. On the further ground that a separate valuation may not be given for any of the elements comprising the property which is taken; that under the cases I would like to cite to your Honor, particularly the case of Morton Butler Timber Company v. United States, 91 Fed. (2d), that

is in the Sixth Circuit, a separate valuation of the component parts of the property taken is not an element of the fair market value. And on the further ground that the date of valuation is the date on which this property was taken over by the United States, to-wit, September 28, 1942.

The COURT. I didn't hear the last part.

(The record was read.)

The COURT. Well, the objection is overruled, and, Mr. Weymann, with regard to the matter of separate valuation, as far as the date is concerned, that is the only basis in the opinion of the court for the separate valuation; that is, one should be considered as of the 28th of September 1942, that is, the real property, and this remaining part, the personal property and equipment, that that should be considered as of either October 1943 or of January 12, 1944. Mr. Dechter has asked the question as of October 1943, and you have made no objection as to any differentiation between October 1943 and January 1944, so the court believes that the only reasonable way that this jury may be able to arrive at the total valuation is to take the separate valuation of those parcels, one as of September 28, 1942, and the other as of October 1943. Of course, in the final valuation; that is, the fixing of it by the jury, there must be a total amount; but for the matter of compiling that or arriving at it, it would have to be taken separately, and this only because of the different dates.

I make that in explanation of the ruling of the court.

Mr. WEYMANN. Thank you, sir. May we have an exception?

The COURT. Yes. Mr. Dechter, in order that the court may be clear, your position is the same as stated by the court?

Mr. DECHTER. That is correct, your Honor.

Q. By Mr. DECHTER. Do you want the question read, Mr. Rush, or do you have it mind?

A. I have it in mind.

Q. By Mr. DECHTER. Will you please give us what your opinion is of the value of this personal property, machinery, and fixtures as of October 1943?

A. Approximately \$18,000.

(R. 210-212.)

* * * * *

The COURT. Well, I think, Mr. Dechter, you could ask the witness and should ask him what he considered the valuation of the equipment less the casing which could not be removed.

Mr. DECHTER. Yes, your honor.

Q. By Mr. DECHTER. Mr. Rush, what, in your opinion, would be the fair market value of the personal property described on pages 1 to 4 of the inventory, Exhibit C of the amended complaint, eliminating therefrom the 5,300 feet of 7-inch casing that you say could not be removed in the event the well was abandoned, and eliminating the 306 feet of 5¾-inch liner in October of 1943?

A. Could I have a piece of paper, please?

(A sheet of paper was handed to the witness.)

A. \$12,260.00.

The COURT. Have you finished?

Mr. DECHTER. Yes, your Honor.

The COURT. Mr. Rush, was there any substantial difference in the value of the equipment which you have said was valued at \$12,260.00 in October of 1943, was there any difference between that value and what the value was of the same equipment September 28, 1942?

The WITNESS. No, there wasn't any substantial difference.

(R. 225-226.)

2. The district court erred in denying appellant's motion to strike the foregoing evidence and in refusing appellant's request to instruct the jury to disregard such evidence, as follows:

Mr. WEYMANN. The plaintiff now moves to strike, and requests the court to instruct the jury to disregard all testimony as to the market value, as of October 4, 1943, of any oil or gas production equipment and facilities, which on September 28, 1942, were located on the leasehold property of the defendant and were then by him used in the production of oil and gas from the producing well known as Blocks Well No. 10, located on defendant's sublease in this proceeding.

The motion is based upon the following grounds:

1st. That under defendant's pleadings he demands compensation for an oil and gas sublease with a producing well thereon as a producing unit; that issue was joined and defendant introduced evidence as to value under that state of facts.

2nd. That separate valuations of portions of a single producing unit, to-wit, of the oil and

gas sublease of the defendant with a producing well thereon and of the equipment and facilities connected with said well and necessary to produce the same is not permissible under the law.

3rd. That it conclusively appears from the uncontroverted evidence that the oil well producing equipment, as to which the witnesses, Block, Rubin, and Rush, testified on market value as of October 4, 1943, were absolutely necessary to the continued operation of said Block Well No. 10, and that without said or similar equipment said well would not be a producing oil and gas well, but a mere hole in the ground lined with 5,300 feet of 7-inch casing and 306 feet of 5¾-inch liner.

4th. That it further appears from all the testimony introduced by defendant as to the market value of defendant's oil and gas sublease as of September 28, 1942, that this value was predicated upon the continued operation of and production from Blocks Well No. 10, and the continued use of all of defendant's operating and producing facilities and equipment which were in, on, or connected with said well on September 28, 1942.

5th. That to permit a valuation of and an award to the defendant for his leasehold estate with the well thereon as an operating property which was capable of producing oil and gas in commercial quantities over a period of years, after the government took possession, by using the equipment and facilities which were connected with and used on the Block Well on September 28, 1942, and to make a separate and additional award for the market value of the same equipment as of October 4, 1943, would

result in a duplication of compensation to the defendant in this: that the defendant would receive the full market value of a producing oil and gas well consisting of the potential future recovery of oil and gas through the well, and of the facilities and equipment necessary for such recovery, and a separate and additional award for the same facilities and equipment which were a part of the producing well and constituted one of the elements of its value as such.

Mr. DECHTER. Your Honor, this is nothing more than a repetition——

The COURT. The court is ready to rule, Mr. Dechter.

I think the motion should be denied and it is denied.

Mr. WEYMANN. May we have an exception, please?

The COURT. Yes. I think, Mr. Weymann——

Mr. WEYMANN. Pardon me?

The COURT. I was just going to say the court didn't have the benefit of all that particular objection at the time the objection was made. That is, the motion that you make to strike is in so much more particularity than the objection was made that the court had to rule upon the objection as it was made and based.

In addition to that, I think by granting that motion there is a certain part of the testimony that you would be asking to strike which was elicited by the plaintiff itself. My recollection on that point is just general; it may not be accurate; but in any event the court denies the motion, and you have your exception.

(R. 431-433.)

3. The district court erred in entering judgment on the verdict.

4. The district court erred in denying appellant's motion for a new trial.

5. The district court erred in excluding from evidence Plaintiff's Exhibit No. 3 (for identification), as follows:

Mr. WEYMANN. I am just submitting to Mr. Dechter a document for his inspection. I offer as Plaintiff's exhibit next in order a telegram from Leo Nielson, Assistant Secretary of the Reconstruction Finance Corporation, to Eugene D. Williams, Special Assistant to the Attorney General, telegram being dated March 26, 1945.

Mr. DECHTER. To which we will object, your Honor, on the ground that it is incompetent, irrelevant, immaterial, being a self-serving declaration and attempting to usurp the province of the court in construing the legal steps theretofore taken by the plaintiff and trying to cast plaintiff's own construction on those legal steps which it is the duty of this court to determine in this matter.

The COURT. May I see it?

Mr. Weymann, the court is inclined to sustain that objection. It sounds as though it is properly based, but I would like to hear from you.

Mr. WEYMANN. The matter which the court is now called upon to pass upon is to determine what the Reconstruction Finance Corporation really did when it authorized the bringing of this action. That is not a self-serving declaration, but it is an explanation of what Reconstruction Finance Corporation meant by what it did. In other words, it is an interpretation, or

rather a statement of what the Reconstruction Finance Corporation had in mind when it passed those resolutions.

The COURT. I think the objection is good. It says here particularly that certain proceedings have been properly construed by justice as an adoption and ratification. It may be marked for identification.

Mr. WEYMANN. Thank you. May I have an exception:

The COURT. Yes.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 3, for identification.)

PLAINTIFF'S EXHIBIT No. 3

(For Identification)

Received Mar. 26, 1945. Lands Division, Los Angeles, California.

GA

SN74 249 Govt.

WUX Washington DC Mar 26 1250P 1945

EUGENE D WILLIAMS

Special Asst to Attorney General

Re Playa Del Rey Gas Storage Project. Amendatory Resolution Adopted by Directors Reconstruction Finance Corporation October 4 1943 Authorizing Amendment to Petition in Condemnation Proceedings Number 2454-B Civil to Include Certain Items of Property Designated As Personal Property Located on Lands Covered in Declaration of Taking Filed in Said Proceedings Has Been Properly Construed by Justice As An Adopted and Ratifi-

cation of Act of Defense Plant Corporation in Taking Possession on September 28, 1942 of Property Listed in Exhibit C of Amended Petition in Condemnation in Connection with Taking Possession of Land Covered by Such Declaration of Taking. At Time Declaration of Taking Was Filed Necessity for Taking Some of Items Described in Said Exhibit C Could Not Be Determined As Defense Plant Corporation Had No Way of Knowing What Items of Property Were Located on Site or Would Be Required in Connection with Operation of Project, and Some of Items Included in Exhibit C, including Oil Drilling Equipment, Were Thought to Be Part of Realty So As to Have Been Acquired Upon Filing of Declaration of Taking. Reconstruction Finance Corporation Did Not Delete Any of Items in Inventory Furnished by Representatives of Defense Plant Corporation Which Inventory Was a List of All Property Known to Be on Lands Taken Except Certain Items of Property Which Were Determined Prior to Adoption Amendatory Resolution of October 4, 1943 Not to Be Required in Connection with Project and with Respect to Which Arrangements Had Been Made for Release to Former Owners

LEO NIELSON

Asst Secretary

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1023 AM

RCD SN 74 TNX

(R. 75-78.)

ARGUMENT

I

The improvements used in producing oil such as well casings and derricks were taken in September 1942

A. The improvements were condemned as of September 28, 1942, under the original complaint

There can be little doubt that the improvements here involved were fixtures which in legal contemplation were part of the real estate. They consisted of a derrick, casing cemented into the well, tubing therein, tanks and machinery, all connected and forming a single operating unit (R. 92-93). Both this Court and the Supreme Court of California have squarely held that precisely such improvements are real and not personal property under California law.

In *Big Sespe Oil Co. v. Cochran*, 276 Fed. 216 (C. C. A. 9, 1921), a sheriff's deed on execution sale of oil land was set aside as violative of the judgment debtor's right of redemption. Only real property can be redeemed, under Cal. Code Civ. Proc. sec. 700a, and the judgment purchaser argued on appeal that his purchase was valid at least as to the "personal property, machinery, and fixtures." This Court rejected that contention, holding (p. 225) that the equipment which had been so designated, consisting of derricks, camp houses, pump house, wells and tanks, was legally real and not personal property. Similarly, in *Cortelyou v. Baker*, 182 Cal. 168, 187 Pac. 417 (1920), where the owner of equipment used in the operation of two oil wells sued a sheriff who had sold it on execution issued against a third person, the court held that

all the equipment except loose tools was real property, as to which the owner's rights were protected without the filing of a third party claim required in the case of personal property. So, too, although a mechanics' lien attaches only to real property, *R. Barcroft & Sons Co. v. Cullen*, 217 Cal. 708, 20 P. 2d 665 (1933), it will attach to an oil rig even when the land on which it stands is separately owned and is protected from the lien by a notice of non-responsibility filed by the landowner. *Cain v. Whiston*, 58 Cal. App. 2d 738, 137 P. 2d 479 (1943).

These decisions conform to the California Civil Code which provides, sec. 658, that real or immovable property consists of land, that which is affixed to land or incidental or appurtenant to it, and that which is immovable by law, and, sec. 660, that "A thing is deemed to be affixed to land when it is attached to it by roots * * *; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; * * * ." California legislation dealing specifically with oil wells reflects a view that improvements to them are real property within the meaning of these sections. Thus Bus. & Prof. Code, sec. 7043, provides that regulation of building contractors "does not apply to any construction, repair or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning or other operation of any petroleum or gas well, when performed by an owner or lessee," plainly indi-

eating that such work is subject to regulation when performed by others, although section 7046 exempts all "construction, alteration, improvement or repair of personal property." Again, Publ. Res. Code, sec. 3233, providing for approval by the State Oil and Gas Supervisor of removal from an oil well of any rig, derrick, other operating structure or casing, seems inconsistent with a view that such equipment is personal property, and might be said to make it, in the absence of such approval, "immovable by law" within the meaning of Civ. Code, sec. 658, *supra*.

The improvements in the present case plainly show why oil well equipment is held to be real property. They include casing extending 6,300 or 6,400 feet into the earth, cemented in so that only 800 or 900 feet can be removed (R. 217, 221). It is difficult to conceive of anything more thoroughly "imbedded" within the meaning of Civ. Code, sec. 660, *supra*. While other components of the oil well are not so irretrievably affixed to the land, the well as a whole constitutes a unit which is attached with such permanency as to be a fixture within section 660. Cf. *Southern California Tel. Co. v. State Board of Equalization*, 12 Cal. 2d 127, 82 P. 2d 422 (1938). "In order to make an article a permanent accession to the land its annexation need not be perpetual. It is sufficient if the article shall appear to be intended to remain where fastened until worn out, until the purpose to which the realty is devoted has been accomplished or until the article is superseded by another article more suitable for the purpose." *San Diego*

Trust & Savings Bank v. San Diego County, 16 Cal. 2d 142, 151, 105 P. 2d 94 (1940), citing 26 C. J. 657.

Appellant as a condemner is of course not affected by the lease provision giving appellee the privilege of removing "personal property and equipment" placed on the premises (R. 123). "Trade fixtures are regarded as personalty as between the tenant and owner [of the land] so far as the right of removal is concerned, but as between the tenant and the condemning party they are regarded as a part of the realty for the purpose of making compensation, so long as they remain fixtures * * * ." *People v. Klopstock*, 24 Cal. 2d 897, 903, 151 P. 2d 641 (1944); *City of Los Angeles v. Klinker*, 219 Cal. 198, 209, 25 P. 2d 826 (1933); *city of Los Angeles v. Hughes*, 202 Cal. 731, 262 Pac. 737 (1927). This is simply one phase of the general rule that despite an agreement to treat fixtures as personal property they remain real property as to third persons, such as taxing bodies, *Trabue Pittman Corp. v. County of Los Angeles*, 28 Adv. Cal. 1, 168 P. 2d 156 (1946), mechanics' lien claimants, *R. Barcroft & Sons Co. v. Cullen*, 217 Cal. 708, 20 P. 2d 665 (1933), or subsequent purchasers or encumbrancers without notice, *Dauch v. Ginsburg*, 214 Cal. 540, 544, 6 P. 2d 952 (1931).

The California law thus is plain that, regardless of any contrary agreement which may be effective as between the parties to it, oil well improvements, whether or not they are trade fixtures, must be considered real property so far as a condemnor is con-

cerned. The Supreme Court has held that the meaning of "property" as used in federal condemnation statutes and the Fifth Amendment is a federal question, but will normally obtain its content by reference to local law. *United States ex rel. T. V. A. v. Powelson*, 319 U. S. 266, 279 (1943). Following that principle, it was held in *United States v. 19.86 Acres of Land in East St. Louis*, 141 F. 2d 344 (C. C. A. 7, 1944), that a building was "land" within the applicable condemnation authorization, when it would have been so regarded by local law in spite of the fact that the landowner had entered into a contract for its sale as personal property, apart from the land. See *United States v. Bechtold Co.*, 129 F. 2d 473, 477 (C. C. A. 8, 1942); cf. *Reconstruction Finance Corporation v. County of Beaver*, 90 L. Ed. (Adv.) 919 (1946). In any event, there does not appear to be any conflict between federal and state law since there are no federal decisions indicating that the oil production equipment is personal property and not part of the realty.

Since the improvements here involved are thus real property for the purposes of this condemnation, they must be considered to be within the scope of Reconstruction Finance Corporation's resolutions of September 18 (R. 273) and October 19, 1942 (R. 73), and the original complaint filed September 28, 1942 (R. 2) although those refer only to "lands." "The State's appropriation of land, unless qualified when made, is an appropriation of all that is annexed to the land whether classified as buildings or as fixtures." *People v. Klopstock*, 24 Cal. 2d 897, 903, 151 P. 2d 641 (1944); *United States v. Bechtold Co.*, 129 F.

2d 473, 476-477 (C. C. A. 8, 1942)); *Jackson v. New York*, 213 N. Y. 34, 106 N. E. 758 (1914); 1 McAdam, *Landlord and Tenant* (5 ed., 1934), sec. 10, pp. 23-25. The pleadings in federal condemnations must conform to the state practice. General Condemnation Act of August 1, 1888, c. 728, 25 Stat. 357, as amended, 40 U. S. C. sec. 258. Since an unqualified complaint to condemn land has thus been declared by the Supreme Court of California to embrace all buildings and fixtures annexed to the land, such a pleading must likewise be held sufficient for that purpose in the federal courts within the state.

Moreover, the record in the present case shows that Reconstruction Finance Corporation manifestly intended that this condemnation should include the improvements. The complaint sought an order of immediate possession and such order was granted (R. 10-13). It would be absurd to suppose that the Government was thereby seeking to take possession of only the land and not the well casings, derricks and other operational equipment permanently affixed to it. In fact, it would have been physically impossible to do so.³ The declaration of taking (R. 14) which the Corporation executed on October 22, 1942, within a few days of its resolutions of September 18 (R. 273) and October 19, 1942 (R. 73), and with reference to them and to the original complaint

³ Since possession was taken of the equipment some of the condemnees in the Playa Del Rey field pursuant to their theory that the equipment was not included in the condemnation proceeding have brought suits against the Government's contractors in the California state courts. See *United States v. Certain Parcels of Land*, 62 F. Supp. 1017 (S. D. Cal., 1945).

filed September 28, 1942 (R. 2), states the estimated just compensation "for said lands with all buildings and improvements thereon and all appurtenances thereto," which sum was therewith deposited in court (R. 15). Certainly the condemnor would not have deposited compensation for improvements if it did not intend to acquire them under the condemnation.

When the United States condemns land in fee, the compensation which it pays does not include the cost to the condemnee of removing his personal property. *United States v. Petty Motor Co.*, Nos. 77-83, October Term, 1945, decided February 25, 1946; 90 L. Ed. (Adv.) 526, 530. In the present case it may be that the condemnees would have been willing to bear the expense of dismantling and removing their oil rigs, in view of the unusual market for used equipment at the time of the taking (cf. R. 172-173); but it may readily be imagined that under more normal market conditions condemnees would be the first to complain of a rule that would leave them saddled with the burden of removing and disposing at their own expense of improvements of the sort here involved. When, as here, abstract legal principles, specific decisions, practical considerations, and manifested intent all unite to indicate that the improvements were taken with the land, there can be no justification for a contrary conclusion.

B. In any event the improvements were condemned as of September 1942 under the amended complaint

Under the court order of September 28, 1942, giving immediate possession (R. 11), Defense Plant Corpo-

ration took possession of the improvements along with the land (R. 33). On October 4, 1943, Reconstruction Finance Corporation amended its original resolution for condemnation by expressly including and enumerating the improvements (Dft. Exh. B, R. 276), and the amended complaint pursuant thereto was filed January 12, 1944 (R. 22). If for any reason it should be concluded that the original complaint for condemnation of the land did not include the improvements affixed to it, nevertheless the amended complaint thereafter brought them within the scope of the condemnation. This Court has recognized the propriety of an amendment to a complaint in condemnation "for greater definiteness and certainty and so as to make provision for just compensation for any interest in the property taken by the United States," *United States v. Carey*, 143 F. 2d 445, 448 (1944), and an amended complaint, of course, speaks as of the date of the original complaint. *United States ex rel. Texas Cement Co. v. McCord*, 233 U. S. 157, 164 (1914); *Campbell v. Johnson*, 167 Fed. 102, 104 (C. C. A. 9, 1909).

Another reason why the amended complaint must be deemed to relate back to include the improvements in the original taking is that where possession is taken before a complaint in condemnation is filed, the date of possession is the date of taking in condemnation. *United States v. Rogers*, 255 U. S. 163 (1921); *Bank of Edenton v. United States*, 152 F. 2d 251 (C. C. A. 4, 1945); cf. *United States v. Lynah*, 188 U. S. 445, 470 (1903). Even where the original taking of possession

was unauthorized, if it is later approved the approval relates back to the original date, which is then considered the date of taking for the purpose of determining compensation. *Shoshone Tribe v. United States*, 299 U. S. 476, 496 (1937). Here, where Defense Plant Corporation took possession of both the land and improvements at the same time, when the suit was begun, and the case was tried under pleadings which included both the land and improvements, it should clearly have been held that this was a simultaneous condemnation of both.

In support of this contention, appellant offered in evidence a telegram dated March 26, 1945, from Leo Nielson, Assistant Secretary of Reconstruction Finance Corporation, to Eugene D. Williams, Special Assistant to the Attorney General (Pltf. Exh. 3 for identification, R. 77; *supra*, p. 19). The purpose for which this was offered in evidence was to show that it was the intention of Reconstruction Finance Corporation, in adopting the resolution of October 4, 1943, to ratify the prior seizure of the improvements. With regard to that, the telegram said:

Amendatory resolution adopted by directors Reconstruction Finance Corporation October 4, 1943, authorizing amendment to petition in condemnation proceedings number 2454-B Civil to include certain items of property designated as personal property located on lands covered in declaration of taking filed in said proceedings has been properly construed by Justice as an adoption and ratification of act of Defense Plant Corporation in taking possession on September 28, 1942, of property listed in Exhibit

C of amended petition in condemnation in connection with taking possession of land covered by such declaration of taking (R. 77).

The court excluded this evidence on the ground that it was a mere expression of a legal conclusion drawn by Reconstruction Finance Corporation as to the effect of what had been done in the proceedings. The court called particular attention to the statement that the resolution had "been properly construed by Justice (i. e., the Department of Justice) as an adoption and ratification" (R. 76). It seems too obvious to require argument that Reconstruction Finance Corporation was not undertaking to advise the Department of Justice as to the legal effect of the proceedings viewed objectively, but rather was informing the Department of Justice that the latter had construed the resolution as the Corporation had intended it to be construed—in effect, that the resolution had been intended as a ratification, when enacted.

It has been held that a letter from the Acting Secretary of the Interior to the Attorney General, stating that the Secretary had reopened a particular claim, is conclusive proof of the fact so stated. *Rollins and Presbrey v. United States*, 23 C. Cls. 106, 124 (1888). So here, where the condemning agency could have requested condemnation of the improvements at any time, its statement to the Department of Justice that it had ratified an earlier seizure of them should have been admitted as some, if not indeed conclusive, evidence that such was the fact. The court erred in excluding it from evidence.

II

The trial court erred in admitting and in refusing to strike separate evidence of the market value or reproduction cost of the oil well improvements

When the United States condemns land, it must pay as compensation "the value of the land as enhanced, if at all, by any permanent structure that is upon it." *United States v. Bechtold Co.*, 129 F. 2d 473, 476 (C. C. A. 8, 1942). It is entitled to have that value determined as a whole even when the land and fixtures are separately owned. *Meadows v. United States*, 144 F. 2d 751 (C. C. A. 4, 1944). Because the issue is the value of the property as an entirety, the court should admit only evidence of its value as a whole, and "separate appraisements of the different elements constituting the whole are improper." *United States v. Meyer*, 113 F. 2d 387, 397 (C. C. A. 7, 1940); *Morton Butler Timber Co. v. United States*, 91 F. 2d 884, 888 (C. C. A. 6, 1937); *Devou v. City of Cincinnati*, 162 Fed. 633 (C. C. A. 6, 1908). See *Kinter v. United States*, (C. C. A. 3, June 7, 1946).

Section 1246.1 of the California Code of Civil Procedure expressly provides that a condemnor is entitled to have the value of the whole determined in advance of its apportionment among the various condemnees. Stats. 1939, c. 210, p. 1456. Even before that enactment it was held that the evidence should be confined to the value of the property as a whole, and that it was improper to admit separate evidence of the value of the improvements. *City of Los Angeles*

v. *Klinker*, 219 Cal. 198, 211-212, 25 P. 2d 826 (1933); *Vallejo etc. R. R. Co. v. Home Sav. Bk.*, 24 Cal. App. 166, 173, 140 Pac. 974 (1914). The only modification of this rule is that provided by section 1872 of the Code of Civil Procedure, under which an expert witness may be asked on direct or cross examination to explain the reasons for his opinion. Stats. 1937, c. 565, p. 1605.

The foregoing principles were no less applicable to the trial of the present case by reason of the fact that the fee title was not under consideration. The improvements here involved "were fixtures to that interest in the realty in aid of the use of which they were affixed," that is, the oil leasehold. *Midland Oil Fields Co., Ltd., v. Rudneck*, 188 Cal. 265, 270, 204 Pac. 1074 (1922).⁴ Consequently, "the damage sustained by the respondent was to its leasehold interest with the improvements and fixtures thereon." *People v. Ganahl Lumber Co.*, 10 Cal. 2d 501, 511, 75 P. 2d 1067 (1938). The leasehold should have been valued as enhanced by the fixtures, and separate evidence of their market value should not have been admitted.

The trial judge apparently recognized the validity of this proposition (cf. R. 108-109), but nevertheless he overruled appellant's continuing objection and admitted separate evidence of the market value or reproduction cost of the improvements (R. 176-179, 210-212, 225-226; *supra*, pp. 10-15). In doing so he

⁴ The equipment actually involved in that case was only placed on the land temporarily for drilling purposes, and was held properly to be considered personal property.

conceded that such evidence is ordinarily inadmissible, and stated that the only reason for allowing it in the present case was that the improvements were personal property, not fixed to the land or taken at the same time, and must be valued as of the time when they were taken (R. 211-212, 223). Later, he apparently accepted the view that all the property was taken on September 28, 1942 (R. 513-514), and instructed the jury to value the leasehold and equipment on the basis of use of the equipment as an integral part of the well (R. 477). Despite this change of view, however, he denied appellant's motion, made at the close of the case, to strike the separate evidence of the market value of the improvements, and refused appellant's request to instruct the jury to disregard such evidence (R. 431-433; *supra*, pp. 15-17).

The error of admitting separate evidence of value is especially clear here since the result is duplication of values.

Appellee argued that the lease should be valued by the sale price of the oil to be produced, less operating expenses, and that additionally "the equipment has a value all by itself" (R. 110), which is "what it would cost to replace these items as of the date the government was authorized to take it over. That is the value; not what the junk value would be or what the value would be for salvage purposes" (R. 222), so that "it is immaterial how much could be salvaged" (R. 215). Pursuant to that theory, appellee introduced evidence of the value of the operational equipment to himself (R. 139, 157), and of its "fair market

value" (R. 176, 178, 211-212), but no evidence of its salvage value. At the same time, his evidence of the value of the oil interest was based on the selling price per barrel of oil expected to be produced, less the royalty payments and operating expenses (R. 141, 247). Both appellee's witnesses on that subject asserted that the value so given did not include the operational equipment (R. 139, 185, 262), but the first, appellee himself, admitted that it was based on production by use of the operational equipment (R. 151). The same was obviously true as to the other witness, Mr. Crown (cf. R. 247), although the court refused to permit him to be questioned specifically on the point, mistakenly stating that it had already been gone into (R. 264). Appellee did not introduce any evidence of over-all value.

Oil production requires the use of equipment, and the operational equipment is therefore part of the property that is being valued when the lease is valued by the selling price of the oil to be produced. Of course, some of the equipment will also have a salvage value when production stops, and that must be considered in valuing the lease; but to add the present market value of the operational equipment to the value of the oil which will be produced by its use is pure duplication, to the extent that market value exceeds the present value of anticipated terminal salvage. To take the simplest illustration, a well is worth nothing more than the oil it will produce, regardless of what it would cost to reproduce its equipment, if the equipment will have no salvage value. Only to the extent that the equipment has sal-

vage value does it add anything above the value of the recoverable oil. Thus, to permit appellee to value the lease based upon oil production and at the same time to consider the market value of the operational equipment needed for such production is to value the same thing twice.

III

The verdict and judgment are not supported by evidence

The jury awarded \$20,397 for the leasehold interest, including the equipment used in operation of the well on September 28, 1942 (R. 490). Appellant submits that the verdict was not supported by evidence, and that therefore it was error to enter judgment upon it, and was an abuse of discretion to deny appellant's motion for new trial made on that ground. The Government's estimates of leasehold value were \$5,650 and \$5,690 (R. 284, 398). Since appellee's only evidence was based upon separate valuation, there was obviously no evidence to support the verdict if that evidence were excluded, as we contended should have been done (*supra*). But even if the evidence of separate value is considered it does not support the verdict.⁵

Appellee's witness Crown valued future oil production at \$11,000 (R. 185). As already pointed out, the testimony of appellee's witnesses as to the market value, or reproduction cost of the operational equipment would duplicate to an undisclosed extent the values included in the oil to be produced, and so cannot be used here. How-

⁵ Of course, a jury verdict which is beyond the range of any evidence cannot stand. *United States v. 685.2 Acres of Land in Lake County*, 146 F. 2d 998 (C. C. A. 7, 1945).

ever, appellee's witness, Rush, did testify that the market value of the equipment, excluding that which could not be recovered at all, was \$12,260 (R. 226).⁶ Of course, no salvage could occur until the end of the ten-year period shown by appellee's evidence as the period of production (R. 141, 244), and money to be realized in the future must be discounted to establish its present value. Appellee's only witness on that subject was Mr. Crown, who testified that 6% was a suitable discount rate, resulting in a present value of 59.2¢ for a dollar payable ten years hence (R. 247, 250).⁷ The sum of \$12,260 to be recovered in ten years would have a present value of \$7,257.92. This, added to Mr. Crown's valuation of \$11,000 for the present value of the oil production, amounts to only \$18,257.92, substantially less than the jury award of \$20,397. Moreover, it makes no allowance for the cost of abandoning the well, an expense of the lessee (R. 254-255, 278), which was estimated by appellee's witness Owens at from \$1,600 to \$1,800 (R. 427, 430). Plainly, this evidence falls far short of sustaining the award.

Appellee himself testified that the oil production was worth \$35,000 (R. 139), but he admitted that this was merely the value to himself and not what he thought a willing buyer would pay (R. 157). His testimony,

⁶ That figure was the value of the equipment in place (R. 216), and would be considerably more than could be realized from it as salvage (cf. R. 408-409). However, it may be used for the sake of argument as a realizable salvage value.

⁷ Witnesses for appellant testified that 8% (R. 324) or 10% (R. 400) would be more suitable, but again for the sake of argument we may accept appellee's evidence and use the rate most favorable to him, 6%.

therefore, should be wholly disregarded. It is well settled that compensation is to be measured by market value and not by value to the condemnee. *United States v. Petty Motor Co.*, Nos. 77-83, October Term, 1945 decided February 25, 1946, 90 L. Ed. (Adv.) 526, 530; *United States v. Honolulu Plantation Co.*, 122 Fed. 581, 584 (C. C. A. 9, 1903). Counsel for appellee recognized the incompetent character of this testimony, but urged that it be given weight as being based on a "sincere belief" (R. 439-440). Obviously, the sincerity of appellee's belief as to what the property was worth to him does nothing to improve the standing of that personal value as a measure of just compensation. The court clearly instructed the jury that it was not to measure the compensation by the special value of the property to the owner (R. 479-480). Appellee never purported to testify to any value other than one personal to him; it follows that his testimony cannot support the verdict.

Moreover, the process by which appellee arrived at his final figure was demonstrably erroneous. It was based upon continuance of the present rate of production which he said was 25 barrels a day (R. 137, 141). But the records of actual production show that it had been several years since an average production of 25 barrels a day was attained (R. 292-293). After estimating annual income he merely took ten times that amount, on the assumption that the income would continue for ten years (R. 141). No discount was made in order to reach a present value for this future income. Nor did Mr. Block make any deduction for the

cost of abandoning the well. This process of Mr. Block's rests on the absurd assumption that oil production would continue unabated up to the last minute of production, although it is obvious that, as his own witness Crown testified (R. 242) actual production follows a declining curve. It also rests on the assumption that value is the anticipated income without even discount for delay; although it is obvious that buyers will also leave a large margin to allow for various risks of operation, misappraisal, lowered prices, and so forth (cf. R. 304, 400). Under these circumstances we submit that Mr. Block's testimony even if it were admissible could not support the verdict.

The statements of Mr. Block and Mr. Rubin valuing the operational equipment at \$22,000 (R. 139, 178) cannot support the verdict. Those estimates embraced all of the equipment on an inventory and represented O. P. A. prices (R. 163-165, 176-178). But as appellee's witness Rush, who valued the items on the inventory at \$18,000, stated, many of the items could not be removed from the property and sold (R. 222-226). Rush valued the items that could be removed at \$12,260 (R. 226). Thus, it is clear that appellee's valuations of the operational equipment did not represent a realizable market value but rather, as appellee's counsel put it (R. 222) the "cost to replace these items." In the case of property such as this where the only enjoyment lies in the realization of income the cost of replacing a portion of it cannot measure its value when the maximum realizable return is much less. Moreover, if the award for the lease is to be

supported by any theory of immediate rather than deferred salvage of the equipment, it will necessarily follow that no allowance can be made for the oil, since when the equipment is removed no oil can be recovered. A condemnee cannot claim a recovery for two inconsistent elements of value. *Roberts v. New York City*, 295 U. S. 264, 284 (1935). Immediate salvage of the equipment not only would have eliminated any oil value for the leasehold, but also would have eliminated all value of the royalty interest, since the royalty value depended entirely on oil production. The award for the royalty was \$1,857 (R. 46, 490), which added to the award of \$20,397 for the leasehold makes \$22,254 in all, or more than the highest testimony as to the present replacement value of all the equipment. Thus, the view of the court below (R. 514) that the verdict might have been rested on the present value of the equipment was unsound.

It is thus apparent that the verdict cannot be supported by any single value testified to, or by any combination of values that can be combined with any logical justification. It must be concluded that the jury reached its excessive valuation by doing as appellee argued should be done, combining the value of oil to be recovered with the total reproduction cost of the improvements. As has been shown, an operator could never have realized that much from the property; therefore, an investor would never pay that much for it, and it is not its market value. But, however the jury may have arrived at its award, the award is unsupported by competent evidence.

CONCLUSION

It is submitted that the judgment appealed from should be reversed and the cause remanded for new trial.

Respectfully,

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JULY 1946.

No. 11282.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, for the use of RECONSTRUCTION FINANCE CORPORATION, a federal corporation, acting in behalf of DEFENSE PLANT CORPORATION, a federal corporation,

Appellant,

vs.

SAM BLOCK,

Appellee.

BRIEF OF APPELLEE, SAM BLOCK.

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TOPICAL INDEX.

	PAGE
Statement of case.....	1
I.	
There was no error in admitting evidence of separate value of the oil well improvements, trade fixtures and personal property	8
A.	
Under the facts of the case, the admission of the challenged testimony was proper.....	8
B.	
The issue of separate value was tendered by both the amended complaint and the amended answer.....	20
C.	
Under the facts proven the highest and best use to which property could be put was removal from the oil well of the trade fixtures and personal property and their sale upon the open market. Proof of value of same was proper upon such issue	22
II.	
The verdict and judgment thereon are supported by the evidence	25
III.	
There was no authority to seize personal property or trade fixtures as of September, 1942.....	31
B.	
The items in question were trade fixtures.....	37
IV.	
No legal or authorized seizure of the personal property, equipment, or trade fixtures until October of 1943.....	40
Conclusion	46

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Banner Mill Co. v. State, 240 N. Y. 533, 148 N. E. 668; cert. den. 269 U. S. 582, 70 L. Ed. 423.....	19
Big Sespe Oil Co. v. Cochran, 276 Fed. 216.....	35
Board of Comm. v. Goode, 44 N. M. 495, 10 P. (2d) 470.....	19
Bond Investment Co. v. Blakesly, 83 Cal. App. 696, 257 Pac. 189	33
Cain v. Whiston, 58 Cal. App. (2d) 738, 137 P. (2d) 479.....	34
Campbell v. New Haven, 101 Conn. 173, 125 Atl. 650.....	19
Churchill v. Moore, 4 Cal. App. 219, 88 Pac. 290.....	38
City of Los Angeles v. Klinker, 219 Cal. 198, 198 P. (2d) 826	13, 14, 15
City of Sacramento v. Heilbruen, 156 Cal. 408, 104 Pac. 979.....	22
City of Stockton v. Vote, 76 Cal. 405, 244 Pac. 609.....	22
Corelym v. Baker, 182 Cal. 168, 187 Pac. 417.....	34
English v. Oympic Auditorium, 217 Cal. 631.....	35
Foley v. Houston Belt Co., 50 Tex. Civ. App. 218, 110 S. W. 96	19
Hall v. City of Providence, 45 R. I. 167, 121 Atl. 66.....	19
Joint Highway Dist. etc. v. Ocean Shore, 128 Cal. App. 752, 18 P. (2d) 413.....	12, 14, 22
Laguna Beach v. Dodge, 18 Cal. (2d) 135, 114 P. (2d) 351.....	9
Linesh v. Board of Education, 13 Ohio App. 161.....	19
Midland v. Rudneck, 188 Cal. 265, 204 Pac. 1074.....	38
New York Central v. Maloney, 234 N. Y. 208, 137 N. E. 305....	19
People v. Church, 57 Cal. App. (2d) 1032, 136 P. (2d) 139.....	38
R. Barcroft & Sons Co. v. Cullen, 217 Cal. 708, 20 P. (2d) 665	34
Rollins v. United States, 23 Ct. Cls. 106.....	41
San Diego v. Neale, 78 Cal. 73.....	22, 23
Shoemaker v. United States, 147 U. S. 379.....	25
Shoshone Tribe v. United States, 299 U. S. 476.....	45

	PAGE
Spring Valley v. Drinkhouse, 92 Cal. 528, 28 Pac. 681.....	22
State v. Carpenter, 126 Tex. 604, 89 S. W. (2d) 979.....	19
United States v. Beckett, 129 F. (2d) 473.....	15, 23
United States v. Certain Parcels of Land, 62 Fed. Supp. 1017....	
.....	33, 44
United States v. Chandler, 229 U. S. 53, 57 L. Ed. 1063.....	25
Water Front, In re, 219 N. Y. S. 353, 219 App. Div. 27.....	19

STATUTES.

Business and Professions Code, Sec. 7043.....	35
Code of Civil Procedure, Sec. 1183.....	34
Code of Civil Procedure, Sec. 1246.1	12
Public Resources Code, Sec. 3233.....	36

TEXTBOOKS.

Black's Law Dictionary.....	12
Jones on Evidence (Civil cases) 4th Ed., Chap. V, Sec. 168, pp. 294-295	20
Orgel, Valuation Under Eminent Domain, p. 56.....	25
Summers on Oil and Gas, p. 276.....	37
1 Thornton, Oil & Gas (4th Ed.), Sec. 652.....	38

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vs.

SAM BLOCK,

Appellee.

BRIEF OF APPELLEE, SAM BLOCK.

Statement of Case.

While the statement of the appellant is in the main correct, we believe it necessary to enlarge thereon to some extent in order to properly present and view the background of the questions raised by the appellant. We will endeavor, insofar as possible not to duplicate appellant's statement.

On September 18, 1942, the Reconstruction Finance Corporation adopted a resolution for acquiring certain "lands" for a "gas storage reservoir" and for the necessary proceedings to acquire the "lands" therein described [R. 72]. On October 19, 1942, an amendment providing for the execution of a declaration of taking of said "lands"

and estimating the just compensation to be paid therefor, was adopted [R. 73].

Possession was taken of the "lands" under order for immediate possession which described only "real property" [R. 11]. Possession was taken of said "lands" *including* certain oil wells thereon and all personal property, fixtures, machinery, equipment, derricks, casing, tubing in the wells and pumping machinery on September 28, 1942 [R. 33]. No machinery, equipment or personal property was described in either of the above referred to resolutions. Complaint in condemnation was filed on September 28, 1942 [R. 10]. The complaint recited the purpose and necessity of the taking, to-wit: "The establishment of a reservoir for the storing in conservation of natural gas" [R. 5 and 6]. It was alleged that the interest sought to be acquired was "full fee simple title" and consisted of lots, pieces or parcels of land situate in the County of Los Angeles, etc. (describing the land but not the improvements, trade fixtures or personal property situate thereon) [R. 6].

About one year later and on October 4, 1943, the R. F. C. adopted an amendatory resolution covering "machinery and equipment" [R. 276]. (Said resolution did not enumerate "structures and improvements attached to the land" as stated by the appellant on page 4 of its brief).

On January 12, 1944, an amended complaint was filed [R. 31], seeking to acquire fee simple title to the real property described in the original complaint, and in addition to acquire "all personal property and trade fixtures located on said real property" [R. 26]. [Ex. C, R. 33 to 41] attached to the amended complaint, described the machinery and equipment as "materials and supplies taken

over by Defense Plant Corporation September 29, 1942, Block Oil Co.” etc.

The appended description or inventory is long and contains many items such as nipples, ells, valves, gas engines, bushings, derrick, sucker rods, tubing, casing, etc. and such other miscellaneous items of personal property as are usually found on oil wells [R. 33-41]. Incidentally, the above list inadvertently omitted two 1000 bbl. storage tanks which were located on the property and taken [R. 136-137].

It was alleged in the amended complaint that the property sought to be acquired by the action included the following: “all pipe, machinery, appliances, equipment, tanks, structures, tools, supplies and all other property whether real or personal which were located upon any of said tracts of land, herein above described, on September 28, 1944 and which on said day were used, or were useful in the operation of any oil or gas wells, etc. thereon, or, in the treating or storing etc. of the products of such wells” [R. 27 and 28].

It was alleged in substance in paragraph XIV of the amended complaint [R. 28] that the plaintiff was unable to determine how much of the property was deemed to be a part of the real property on which it was located for the reason that the plaintiff did not know the terms of the oil and gas leases under which the property was placed on the premises, etc.; and “that plaintiff therefore designated *all of* said property as *personal property* and trade fixtures solely for the purpose of identifying the same as part of the property taken” and would ask leave of Court to amend the complaint accordingly “*if and when it shall be ascertained that any of the property ‘herein’*

designated as personal property and trade fixtures is in fact part of the realty upon which it is located.” [See paragraph XIV Am. Comp. R. 28.]

No such amended complaint was ever filed and no designation was made contending that any of the personal property or trade fixtures were in fact part of the realty.

Defendant Block answered [R. 41], alleging that the oil and gas lease which he held, had a market value of \$35,000.00; that an overruling royalty interest in the property he held was worth \$6,500.00; and that the personal property and trade fixtures owned by him had a market value of \$20,401.01.

Defendant denied that the resolution of the R. F. C. of September 18, 1942, determined to take the personal and mixed property described in the amended complaint and denied that there was any authority for the taking of possession of the same until October 24, 1943.

On the issues so tendered appellant made no proof as to the type and kind of machinery, equipment, tools or supplies sought to be condemned other than as disclosed by the inventory [Exhibit “C”] attached to the amended complaint. Nor was there proof as to whether such items were fixtures, trade fixtures, real or personal property. The only proof which may be deduced from the record is the fact that the part of the equipment was used to produce oil from the oil well located upon appellee’s lease. *In short, appellant made no proof to support the allegations of paragraphs XIII or XIV of the amended complaint.*

It was stipulated, that the base lease from the fee owner to the original lessee under whom appellee held, provided

in substance, that the lessee after having the right to explore and develop for oil, also had the right to remove “during or, after the term any and all improvements placed or erected on the premises by the lessee, including the right to pull all casing” [R. 97]. [See also R. 199.]

It likewise appears that upon termination of the sublease (held by appellee) lessee was given 30 days thereafter to remove any personal property and equipment placed upon the premises [R. 123].

It appears also from the testimony, which is not disputed, that it is common practice in the oil industry for oil well equipment such as derricks, tubing, rods and casing to be moved from one well to the other [R. 173].

It appears further that the equipment and machinery was considered to be personal property by witnesses for both appellant and appellee [see R. 135 testimony of appellee]. Appellant’s expert, the witness Oliver testified that the “facilities that are considered a part of the personal property of the well had to be maintained on the premises during the period that the anticipated life of the well had been contemplated in these valuation reports” (as given by the witnesses) [R. 305].

It was further shown that all of the equipment could be removed from the well and well site, in the ordinary course of business, and would be so removed upon abandonment, except as to 800 or 900 feet of the surface casing [R. 223-224].

Appellee testified, *without objection*, that the market value of the leasehold, subject to land owners’ royalty and overriding royalty, was \$35,000. which valuation did not include personal property and fixtures [R. 139].

He likewise testified, *without objection*, that the personal property and fixtures described in Exhibit "C" including two storage tanks which were omitted from the Exhibit and which were taken, was of the reasonable market value of \$22,000. [R. 139.] On cross-examination, appellee testified as to separate valuations on separate items of the equipment which included two 1,000 bbl. tanks, placing a value of \$1500 for the tanks, and \$4,000. for the derrick [R. 162-163], valuing the tubing at 35¢ per foot (there were 6487 feet of tubing). The appellee had long been engaged in the business, buying and selling this type of equipment [R. 138].

Appellee's witness, Crown, testified, *without objection by the appellant*, that the fair market value of the *leasehold*, *not including* personal property and fixtures located thereon, was approximately \$11,000 [R. 185, also R. 262].

The testimony of the appellee's witnesses, Rush and Rubin, as to the value of the machinery and equipment, was admitted over objection as set forth in the appellant's brief. G. R. Rush testified that his valuations were based upon an "as is" condition of the equipment [R. 228] and that there was no substantial difference of value between October, 1943 and September 28, 1942 (see also testimony of appellant's witness Oliver on direct examination) [R. 320].

On cross-examination, the witness Oliver testified that the replacement value of the equipment on September 28, 1942, was \$19,846.85 [R. 365].

The appellant's witness Wents, upon cross-examination, testified as to the market value of tubing, $\frac{7}{8}$ " sucker rods,

¼" sucker rods, 7 " casing, 5¾" liners, and the derrick. The aggregate value of the above items as given by Mr. Wents being approximately \$13, 858.88 [R. 406 to 409]. This did not include many other items listed on Ex. C but only the major items.

In addition to the instruction to the jury contained on page 9 of appellant's brief, the Court instructed the jury as follows: "the inquiry in all such cases as to the uses of the property in relation to market value is: What is the property worth in the open market viewed not merely with reference to the use to which it is at the time applied, but with reference to the uses for which it is adapted; that is to say, what is it worth from its adaptability for all uses, having regard to the existing wants of the community and such wants as reasonably may be expected in the immediate future, and in this connection, you may take into consideration all of the uses for which the property is reasonably adaptable, including its particular fitness for particular purposes when such evidence for such purposes forms a factor in determining market value. In determining the market value of the property here involved, you may consider its location and environment and the character and nature of the developments surrounding it, its characteristics, its accessibility or lack thereof, and any and all physical factors that may in any way affect its adaptability and therefore its value on the open market." [R. 484.]

The verdict was returned and judgment entered thereon as set forth in appellant's brief. Motion for a new trial was denied.

No question has been raised as to the above instructions.

I.

There Was No Error in Admitting Evidence of Separate Value of the Oil Well Improvements, Trade Fixtures and Personal Property.

(a) UNDER THE FACTS OF THE CASE THE COURT'S RULING WAS PROPER.

(b) THE ISSUE OF SEPARATE VALUE WAS TENDERED BY THE AMENDED COMPLAINT AND THE AMENDED ANSWER.

(c) THE PROOF DISCLOSES THAT THE HIGHEST AND BEST USE OF PROPERTY TAKEN WAS THE REMOVAL AND SALE OF THE PERSONAL PROPERTY AND TRADE FIXTURES. SEPARATE VALUE OF THE LATTER WAS PROPER UPON THIS ISSUE.

A.

Under the Facts of the Case, the Admission of the Challenged Testimony Was Proper.

In discussing the specifications of error raised by appellant, we shall first consider the contention that there was error in the admission of testimony of appellees witnesses of separate value as to the trade fixtures, machinery and equipment and personal property located on the leasehold. It is our contention that under the facts of this case, no error occurred, and further that the testimony of appellant's own witnesses contains evidence of separate value, and that such testimony was proper and necessary to arrive at the fair, just and reasonable market value of the property taken from appellee.

The law clearly recognizes that in the field of eminent domain, factual situations may exist wherein it becomes necessary to depart from the general rule as stated by

appellant as to the admissibility of testimony of value and that such departure may be proper and the only fair and equitable method of arriving at the fair market value and just compensation to be paid to a condemnee.

In this case, the appellee was the owner of an oil and gas leasehold estate and the trade fixtures and personal property located thereon. Both were taken by the condemnation proceedings (as well as the fee title to the real property). The leasehold of the appellee being an oil and gas lease was a profit *a prendre*, that is, an incorporeal hereditament or an interest in real property, *Laguna Beach v. Dodge*, 18 Cal. (2d) at 135, 114 P. (2d) 351. Under it, he had the right to enter upon the property and extract and remove therefrom oil, gas and other hydrocarbon substances and reduce the same to possession and ownership. The leasehold estate embraced a proven oil field having a known oil reservoir and known production. That such leasehold estate including the right of removal of the oil and gas had a market value can not be disputed. The right of removal of the oil and gas was taken from appellee by appellant. In addition, the right of appellee, under his lease, to remove trade fixtures and personal property owned by him and used by him on the lease, was taken from him. Such latter right could have been exercised by appellee during the term of his leasehold estate, and incidentally by the condemnor after seizure.

The appellee's bare right to enter upon the land and to take and extract the oil, had a market value without the existence thereon of production equipment. A well had already been drilled and was in being. It required no additional drilling expense to tap the oil reservoir in order to exercise the right of removal. Also, appellee's trade

fixtures and personal property which were removable by him had a definite market value upon the date of the taking of possession thereof by the appellant.

Appellant's testimony gave the value of both the leasehold estate and the personal property as approximately \$5650. Such valuation was arrived at by estimating the potential life of the well and production of the well, less the cost of recovering the oil, less a discount of the net return from the sale of the oil on a 10-year basis, plus the salvage value of the fixtures and machinery *at the time of the termination of the estimated life of the well* ten years hence. [R. 301 to 306.] No consideration was given to the *present going* market value of the trade fixtures and personal property nor to the question of what a buyer who had the right of removal of such trade fixtures upon purchase of the lease would be willing to pay therefor as of the date of the taking. The evidence discloses that the "as is" value of said fixtures and equipment as of the date of the taking was nearly \$18,000 and there is little variance between the testimony of the appellant and the appellee upon this phase. This latter figure does not take into consideration the market value of the leasehold estate, *i. e.*, the profit a prendre or the right to enter upon the land, extract the oil and reduce the same to possession and ownership.

Appellee was entitled to have the jury consider the highest and best use to which the property condemned could be put in order to determine the fair market value thereof. The evidence herein discloses that the highest and best use at the date of the taking from a dollars and cents standpoint would be the removal of the trade fixtures from the well and the sale thereof, which would result in a return

of between \$12,000 and \$18,000. It is thus clear that appellee could have realized upon the open market for his equipment alone more than three times the sum that the appellant states is the reasonable market value of both the leasehold *and* the fixtures and personal property.

In the final analysis, appellant seeks to acquire the fixtures and personal property on a valuation basis, *not* as of the date of the taking, but rather as of ten years hence and after they had been used for that period by the condemnor and then only upon payment of salvage or junk value. This all too clear fact cannot be eliminated by appellant by saying that the trade fixtures and personal property is part of a "going concern" and hence it was required only to pay salvage value ten years hence, especially where appellant could have shut down the well upon taking possession and sold the equipment at its then market value.

It is, we assert, entirely unreasonable and unjust to apply such an unrealistic mathematical formula as used by appellant, to the valuation of condemned property and say in one breath that the reasonable market value is some \$5600 and in the next breath say that a part of the property could be removed from the premises and sold upon the open market for nearly \$18,000.00. Would any man maintain \$18,000.00 worth of personal property and trade fixtures upon real property having the then right to remove same, and continue to use them in the process of producing goods or wealth, with the expectation of earning \$5600.00 over a period of ten years and at the end of said ten year period, have the value of said trade fixtures and personal property reduced to a normal or junk value? That is the appellant's position in the instant case.

In this respect, it is submitted that the appellant has vitally misconceived the *just* compensation to be paid to a condemnee.

In *Joint Highway Dist. etc. v. Ocean Shore*, 128 Cal. App. 752, 18 Pac. (2d) 413 the court says:

“In *San Diego Land etc. v. Neal*, 78 Cal. p. 63 20 Pac. 372. The court said at page 67:

“The word ‘value’ is used in different senses. Bouvier, in his definition, says: ‘This term has two different meanings. It sometimes expresses the utility of an object and sometimes the power of purchasing goods with it. The first may be called the *value in use*, the latter the value in exchange.’ For the purposes of the law of eminent domain, however, the term has reference to the *value in exchange, or market value*.” (Italics ours.)

Also, in Black’s Law Dictionary we find the following:

“Value. The utility of an object in satisfying, directly or indirectly, the needs or desires of human beings, called by economists ‘value in use’; or its worth consisting in the power of purchasing other objects called ‘value in exchange’.” The distinction between value in use and value in exchange or market value has been generally recognized by the courts and it is well settled that it is the market value which governs in proceedings in eminent domain and not the value in use to either the owner or condemnor.”

Appellant has cited section 1246.1 of the *Calif. Civil Code of Procedure* to the effect that a condemnor is entitled to have the value of the whole determined in advance of its apportionment among the various condemnees.

We do not quarrel with such proposition but point out that such section of the *Calif. Civil Code of Procedure*, by its express terms, provides "where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have amount of the award for said property first determined as between plaintiff and *all* defendants claiming any interest therein" etc.

In the instant case, there are not two or more estates or divided interests involved. Only the leasehold estate of the appellee together with the trade fixtures and personal property located thereon were taken, and no person, other than appellee claims to have any right or interest therein or to be entitled to any portion of the award. The interest of lessor, or the fee had been taken and payment made therefore. Clearly such section is not authority for appellant's position.

Appellant cites and relies upon *City of Los Angeles v. Klinker*, 219 Cal. 198, 198 P. (2d) 826, as authority for the proposition "that evidence of separate values is not proper." Careful examination of that case discloses, however, that the California Supreme Court clearly recognized that the rule is not one of universal application. In reality, the case supports appellee's position that evidence of separate valuations under certain circumstances, are proper.

The cited case involved the condemnation of the old Times Building in Los Angeles, California. The evidence disclosed that certain printing and processing equipment and presses had been *especially designed for that building when it was built*. The owner contended that the same was therefore a part of the realty and that he must be compensated therefore by the condemnor.

The condemnor on the other hand contended that the processing equipment and machinery, etc. was personalty and that the same was not being taken and that no award should be made therefor.

The dispute turned upon the point as to whether or not such machinery and equipment were fixtures under the California law. The court determined that under the facts of the case, the same were fixtures and realty and that the owner was entitled to compensation therefor. In the course of the opinion the Supreme Court said:

“The market value of the land together with the improvements thereon, viewed as a whole and not separately, is the general rule (*Vallejo v. Home Sav. Bank*, 24 C. A. 166) *exceptions to this general rule might be allowed where under peculiar circumstances not here present, as by reason of the nature of the improvement itself, no other criterion would be appropriate for establishing the market value of the property other than the structural value or the reconstruction cost. The case of Joint Highway District No. 9 v. Ocean Shore R. R. Co.*, 128 C. A. 747 seems to be an illustration of the exception.” (Italics ours.)

In the *Ocean Shore Railway* case cited in the *Klinker* case, the court said:

“Appellant further states that the market value cannot be based upon cost of reproduction plus appreciation less depreciation. There is some conflict of authority on the question of the admissibility of evidence to show such cost of reproduction, but we believe that when it appears that property is improved so as to make it peculiarly adaptable for its highest available use and that there may be said to be

a market for the property for such use, the cost of reproduction of such improvements becomes a factor in the determination of market value and to that extent, the opinions of witnesses may be based on such cost. This does not mean, however, that such cost upon reproduction is the market value of the land for other factors including demand, enter into the ultimate determination of market value.”

Appellant likewise relies upon the case of *U. S. v. Beckett*, 129 F. (2d) 473 (C. C. A. 8). That case clearly sustains the appellee’s position herein. The facts of the case were in substance as follows: Condemnation was sought of certain real estate on which there was located a building containing a bookbindery, with the machinery and processing equipment necessary therefor. The government contended that it was liable to pay only for the land and buildings without compensation for the machinery. Defendant contended that it was entitled to compensation for the equipment and machinery as well. The court determined that the machinery was a fixture and part of the realty under the law of the State of Missouri (as in the *Klinker* case, *supra*). The plaintiff condemnor objected to evidence of the defendant as to separate valuations upon the machinery and processing equipment. The court held such evidence was properly received, saying:

“. . . As a part of its proof to establish the value of the property taken, defendant offered testimony of certain experts as to the cost of reproduction, less depreciation. In some instances the testimony dealt only with the building proper, while in other instances the testimony dealt with the fixtures, and it is insisted that this permitted a recovery of separate

items, additional to the market value of the land. There was opinion evidence as to the value of the entire structure, including land, building and fixtures. There was an appraisal by an appraising company, which in addition to fixing a total value of the property as a whole, gave detailed appraisals of the various elements which went into this valuation. Corroborative of the valuation of the property as a whole, that there was evidence as to the cost of reproduction of the building and fixtures, less depreciation. We have already held that both the building and the fixtures constituted part of the realty. The property taken was the land as enhanced by the value of structures and fixtures. Manifestly, evidence as to the cost of reproduction, less depreciation, was proper evidence to be taken into consideration by the jury in determining the value of the property as a whole. Thus, in *Banner Mill Co. v. State*, 240 N. Y. 533, 148 N. E. 668, 41 A. L. R. 1019, it was held that in ascertaining the fair market value of land upon which a flour mill was situated, the court might consider not only the cost of production but all the costs necessarily or reasonably expended in bringing the mill into effective working condition, all to be weighed with the other evidence of value; that all the uses that could be made of the property might be considered, as well as the value of the plant as a live, going flour mill, and the increased value, if any, which the structure as used had given to the land, and all the valuable appurtenances and availabilities of the property. . . .”

And again, at page 478:

“A market value could scarcely have been established, and as said by this court in *Hart & Rand v. Biston Coffee Co.*, 41 F. (2d) 625: ‘Where value

is an issue the inquiry may properly be allowed to take a wide scope. Evidence of the cost, selling price, replacement value, location of the property, local demand for it, and many other things may be shown. Many elements properly enter into the determination of "fair value," and evidence bearing on the question may be admissible, although it may have but little weight.'

"It is urged by plaintiff that the Missouri courts have held to the contrary, and in support of that contention the case of *City of St. Louis v. Turner*, 331 Mo. 834, 55 S. W. (2d) 942, 944, is relied on. In that case the court said that all the testimony was to the effect that the building was obsolete and not adapted to the character of the land. But the court said that, 'It is true that where the character of the structures is well adapted to the kind of land upon which they are erected, the cost of the buildings and fixtures, after making proper deductions for depreciation by wear and tear, may be a reasonable test of the amount by which they enhance the market value of the land.'

"The cases of *Devou v. City of Cincinnati*, 6 Cir., 162 Fed. 633, and *United States v. Meyer*, 7 Cir., 113 F. (2d) 387, are also relied on by the plaintiff, but in the *Devou* case the court does not hold such evidence inadmissible in all cases but that it was inadmissible in that case. In the course of the opinion it is said: 'There may be cases where it is proper enough to permit testimony as to the value of the building separate from the land, and all the land separate from the building, where from such evidence the jury can reach the fact which it is to ascertain, namely, the market value of the land including the building.' (162 F. 636.)

“The Meyer case dealt with timber land, and the court correctly held that separate valuation of the timber would be improper.

“Value of structures and fixtures constituting a part of the realty to be taken may be shown as an aid to the jury in finding the value of the real estate and in fixing just compensation for the whole property. *City of Baltimore v. Himmel*, 135 Md. 65, 107 A. 522; *In re Blackwell's Island Bridge*, 198 N. Y. 84, 91 N. E. 278, 41 L. R. A., N. S., 411, 139 Am. St. Rep. 791; *Banner Mill Co. v. State*, *supra*; *Seattle & M. R. Co. v. Roeder*, 30 Wash. 244, 70 P. 498, 94 Am. St. Rep. 864. *In re Blackwell's Island Bridge*, *supra* (198 N. Y. 84, 91 N. E. 279, 41 L. R. A., N. S., 411, 139 Am. St. Rep. 791), the court, among other things, said:

“‘But when a building has an intrinsic value, which must be added to the value of the land in order to ascertain the value of the whole, the owner may not be able to establish his just compensation unless he is permitted to prove the value of his land as land and the value of his buildings as structures. By adding to each other these two quantities the result is really the value of the land as enhanced by the buildings thereon.’”

In this case it is submitted, the owner would be unable to prove his just compensation, unless he be permitted to prove the value of trade fixtures and personal property as such, and the value of leasehold as such as of the date of seizure. He should not be limited to proof of value of leasehold and trade fixtures, based upon an *income return alone* of both over a period of years, and have his trade fixtures valued on that basis. He should

be allowed to prove the value of such trade fixtures on the open market as of *the date of the taking*.

Where land is improved and the improvements have an intrinsic value which must be added to the land in order to ascertain the market value of the whole, evidence of separate value of the improvements is admissible. *Liness v. Board of Ed.*, 13 Ohio App. 161; *Hall v. City of Prov.*, 45 R. I. 167-121 Atl. 66; *State v. Carpenter*, 126 Tex. 604-89 S. W. (2d) 979; *Campbell v. New Haven*, 101 Conn. 173, 125 Atl. 650; *N. Y. Central v. Maloney*, 234 N. Y. 208, 137 N. E. 305; *Board of Comm. v. Goode*, 44 N. M. 495, 10 Pac. (2d) 470; *In re Water Front*, 219 N. Y. S. 353, 219 App. Div. 27; *Foley v. Houston Belt Co.*, 50 Texas Civil Appeals 218, 110 S. W. 96; *Banner Mill Co. v. State*, 240 N. Y. 533, 148 N. E. 668 (Certiorari denied 269 U. S. 582, 70 L. Ed. 423).

We have searched diligently for authorities involving the condemnation of oil producing property and leasehold estates similar to the one at bar. We have found no case on all fours. In view, however, of the statements of the courts hereinabove quoted, we earnestly urge that testimony of separate value under the facts of this case was properly admissible and was the only fair, just and reasonable method of arriving at true, reasonable market value of that of which appellee was deprived.

Furthermore, evidence of separate value of the lease without the trade fixtures and equipment was received without objection. [R. 139, leasehold; R. 139, trade fixtures, etc.; R. 162-3; R. 185 and 262, leasehold alone.]

We think the statement contained in *Jones v. Evidence* (Civil cases), 4th Ed., Chap. V, Sec. 168, pages 294-295, with reference to condemnation proceedings, is highly pertinent:

"In condemnation proceedings and proceedings to recover compensation for lands taken or damaged, it is perhaps the majority rule to determine questions as to relevancy liberally and to resolve doubts as to admissibility in favor of the facts offered in evidence rather than against them." (Italics ours.)

B.

The Issue of Separate Value Was Tendered by Both the Amended Complaint and the Amended Answer.

As we have heretofore pointed out, the amended complaint alleged in paragraph XIII thereof [R. 27]

"that the property which plaintiff by this action intends and seeks to take, acquire and condemn, hold and own, includes the following:

"(b) All pipe, machinery appliances, equipment, tanks, structures, tools, supplies and all other property, whether real or personal, which were located in or upon any of said tracts of land hereinabove described, on the 28th day of September, 1942, and which on said day were used, or were useful in operation of any oil or gas wells upon and in said parcels of land or in the treating, storage or disposing of the products of any such wells."

Paragraph XIV of the amended complaint [R. 28] alleged in substance that the plaintiff was unable to determine how much of the property described in paragraph XIII, "is deemed to be part of the real property on which it is located," for the reason that plaintiff did not know

the terms of the oil and gas leases under which the property was placed upon the premises for the purpose of producing oil or gas therefrom; that plaintiff

“therefore designates all of said property as personal property and trade fixtures solely for the purpose of identifying the same as part of the property taken and will amend the complaint accordingly if and when it be ascertained that any of the property herein designated as personal property and trade fixtures *is in fact part of the realty.*” [R. 27.]

The amended answer of the appellee alleged that he was the owner of certain personal property or trade fixtures affixed to or used in connection with the oil well and that the reasonable value of the same was the sum of \$20,401.01; that by reason of the taking of the same, he had been damaged in that sum. [R. 43.]

Appellant filed no amendment to the amended complaint as was contemplated by paragraph XIV hereinabove quoted. Therefore the case must be deemed to have proceeded upon the theory that the property described in paragraphs XIII and XIV *was not in fact a part of the realty.* Appellee, in view of the failure to amend by the appellant, was entitled to proceed to trial upon the theory that said property was personalty, and accordingly tended issue upon that premise. Under the issue so framed, appellee was fully justified in offering testimony as to the value of said personalty, and appellant cannot now complain of any error in the admission of such testimony as being prejudicial to it. Furthermore, the inventory [Ex. C. to the amended complaint, R. 33] listed property as “materials and supplies taken over

by Defense Plant Corporation on September 29, 1942.” Thus having framed the issues, appellant cannot now complain that the jury was permitted to hear evidence of the value of such “materials and supplies” or “property not herein designated in fact as a part of the realty upon which it is located.”

C.

Under the Facts Proven the Highest and Best Use to Which Property Could Be Put Was Removal From the Oil Well of the Trade Fixtures and Personal Property and Their Sale Upon the Open Market. Proof of Value of Same Was Proper Upon Such Issue.

We think it indisputable that in determining the amount of the award, the jury was entitled to consider the uses to which the property was adapted, that is to say, what was its worth from its adaptability for *all uses*. The court so properly instructed the jury. [R. 484.]

Matters which anyone contemplating the purchase might take into consideration in determining its value, are proper to be laid before the jury in determining the value of the property sought to be condemned. *City of Stockton v. Vote*, 76 Cal. 405, 244 Pac. 609; *Spring Valley v. Drinkhouse*, 92 Cal. 528, 28 Pac. 681; *City of Sacramento v. Heilbruen*, 156 Cal. 408, 104 Pac. 979.

Thus the market value may be greater or less than the value *in use* to either the owner or the condemnor, but in the eyes of the law, it is a fixed amount determined by the highest sum which the property is worth to persons generally purchasing in the open market in consideration of the property's adaptability to any proven use. *Joint Highway District No. 9 v. R. R. Co.*, 128 Cal. at 755, 18 Pac. 413; *San Diego v. Neale*, 78 Cal. 73.

The theory of the appellant's witnesses upon value was based upon "the value in use." Whereas the "value in exchange or market value" should govern. (See *San Diego v. Neale, supra.*)

We think the entire situation is eloquently expressed in *U. S. Bechtold*, 129 F. (2d) 472, wherein it was said:

"as was said by the Court of Appeals of New York in *Jackson v. New York*, 213 N. Y. 34, 106 N. E. 758, L. R. A. 1915D 492 Ann. Cas. 1916C 779, speaking through Judge Cardozo, now Mr. Justice Cardozo:

" 'Condemnation' is an enforced sale, and the state stands toward the owner as buyer toward seller. On that basis the rights and duties of each must be determined. It is intolerable that the state, after condemning a factory or warehouse, should surrender to the owner a stock of second-hand machinery and in so doing discharge the full measure of its duty. Severed from the building, such machinery commands only the prices of secondhand articles; attached to a going plant, it may produce an enhancement of value as great as it did when new. The law gives no sanction to so obvious an injustice as would result if the owner were held to forfeit all these elements of value. An appropriation of land, unless qualified when made, is an appropriation of all that is annexed to the land, whether classified as buildings or as fixtures, and so it has frequently been held.' "

In the instant case it is clear that the machinery severed from the oil well commanded a substantial value in the open market. According to the appellant's theory attached to the going oil well it had little or no value. In other words, the situation is the converse of the situation

commented upon by Mr. Justice Cardozo. It would be just as intolerable that the State condemn the lease with valuable machinery and equipment thereon which could be immediately removed by the State and sold for a substantial sum, giving the owner only the junk value of the machinery computed, not as of the date of the taking, *but as of ten years hence*.

To paraphrase the language of Judge Cardozo,

“the law gives no sanction to so obvious an injustice as would result if the owner were held to forfeit the elements of value to suit the present day value of his machinery and equipment”

by the placing thereon of a valuation as junk value only after it had become worn out or depleted by a long term use by the condemnor, and seeking only to pay such junk value, or by placing valuation thereon only in connection with a producing oil well, based solely upon the income of such well. Yet that is exactly what appellant would have this court do.

In determining the market value of the property condemned for public purposes, the same conditions are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is at the time plainly adapted; that is to say, what is it worth from its availability for all purposes. The property is not to be deemed worthless because the owner allowed it to go to waste or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it and make it subserve the necessities and conveniences of life.

The owner must be compensated for what is taken from him but that is done when he is paid its fair market value for all available uses and purposes.

Shocmaker v. U. S., 147 U. S. 379;

U. S. v. Chandler, 229 U. S. 53, 81, 57 L. Ed. 1063, 1082;

Orgel, Valuation Under Eminent Domain, page 56.

II.

The Verdict and Judgment Thereon Are Supported by the Evidence.

It is appellee's position that the testimony of the appellant's witnesses, alone, is sufficient to support the verdict. When the above evidence is coupled with the remaining testimony in the case, the propriety of the verdict becomes even more apparent.

The nub of appellant's argument is found on pages 38 and 39 of its brief wherein it is argued that in case of property such as this, "the only enjoyment lies in realization of income," the value of which cannot be measured by the cost of replacement of a portion thereof when a realizable maximum return is less." In other words, "value in use" and not value "in exchange or market value" must govern. Further, it is argued that if the award for the lease is to be supported by any theory of *immediate* rather than deferred salvage of the equipment, that it necessarily follows *that no* allowance can be made for the oil, since, the equipment being removed, no oil can be recovered. By such statement we assume that appellant's position is that the leasehold estate has no value

in the absence or the presence of production equipment thereon. This line of reasoning may be termed as upside down thinking.

The leasehold estate, which is property, consists of the right to enter upon the land and extract the products thereof. The property right to enter upon land and take its produce is a valuable property right and has value independent of the immediate presence of machinery and equipment with which to take and extract the produce of the product. Aside from the presence of equipment, the leasehold has a value which may be determined by many factors, viz.: Is the property proven oil property, and if so, what is its production potential? Has a well been drilled and can it be used? What is the cost of producing the property? Many other factors also enter into *the* question of value.

This leasehold, this property right, this valuable thing was taken from appellee. The fact that there may be no production equipment presently upon the well does not destroy the value of the property taken, that is, the right to enter and reduce the oil to possession and ownership. That right cannot be cast into limbo without compensation to the owner therefor, by the fiction of saying it has no value because there is no present machinery thereon to enable the owner thereof to enjoy the right of removal. That is like saying that real property known to have valuable deposits of coal with shafts already sunk, giving access thereto, has no value because there is presently no mining machinery upon the property.

The oil well had been drilled and was in existence. If there were not one bit of production equipment located

thereon, the leasehold of itself had a market value. It is ridiculous to say otherwise particularly where it is known that machinery could be placed there at any time.

Mr. Crown, the expert, testified that the *leasehold* had a fair market value of \$11,000, and that such figure did not include personal property and fixtures then present upon the well. [R. 185.] Even the value of the casing in the well was not taken into consideration upon this valuation. [R. 230.] If such casing could be salvaged, the value of the leasehold would be higher. In other words, Mr. Crown, a qualified expert, gave his opinion of value on the leasehold estate and the rights flowing therefrom alone based upon an oil and gas standpoint only. [R. 262.] Such oil *could be reduced to production* by placing production equipment on the well. Add to this the testimony as to the present value of the production equipment as given by the various experts, and it becomes apparent that the amount of the verdict is fully justified.

Appellant's witness Oliver gave a value to the equipment of \$19,846.85 (replacement value). [R. 365.] Appellant's witness Wents, gave the present market value of 4 items about which he was cross-examined, which, when reduced to dollars and cents amount to \$13,858.88. [R. 406 to 409.] Appellee Block, who was in the oil well supply and equipment business, gave the present value of the production equipment at \$22,000. [R. 139.] The witness Rush gave his opinion of the value thereof as \$18,000 and a value [R. 212] excluding casing in

the well, of \$12,260. [R. 226.] The witness Rubin, a qualified expert, gave his opinion of the value as \$22,000. [R. 178.] These were values as of the date of the taking and *not the salvage value of the equipment ten years hence*. Certainly the jury had the right and duty to take into consideration all of the above factors in arriving at its verdict.

The testimony of the appellant's witnesses alone is sufficient to sustain the verdict.

The witness Wents, on cross-examination, testified as to the market value of 4 items contained on the inventory and a computation of such figure gives the result of \$13,858.88. [R. 406-9.] This figure does not include numerous other items of personal property or fixtures contained in the inventory. As above pointed out, the witness Oliver testified the replacement value of \$19,846.85. These values were before the jury and properly so.

In so far as the value of leasehold is concerned, appellant's witnesses placed a value thereon of \$2,700 (by Wents), and \$3,100 by Oliver. Examination of appellant's own evidence [Ex. 8, R. 292-293] discloses the absurdity of such opinion, a fact which the jury no doubt took into consideration. The valuation of the leasehold by appellant's experts was predicated upon future production from the premises resulting in an income return in dollars and cents. Of course the potential income from property is only *one* element of market value. Thus the sole element considered in arriving at market value is

based upon the so-called "value in use" theory. As has been pointed out, this is not the proper criterion.

Accepting, for the sake of argument only, such method of determining reasonable market value, it is clear that appellant's evidence patently discloses the gross undervaluation of the government experts. Examination of Appellant's Exhibit 8 [R. 292], gave the jury an eloquent yardstick with which to measure the weight of the opinions of appellant's expert witnesses. That exhibit discloses that from October, 1940 to September, 1942, a period of two years prior to the government's seizure, the well produced 13,644 bbls. of oil. Giving the oil a value of 80¢ per bbl. (the value placed thereon by the government witnesses) results in a dollar value of \$10,915.20. 70% or the sum of \$7,640.64 belonged to appellant. Deducting therefrom the government's own figures as to production cost of \$1,380 per year, or the sum of \$2,760.00 for the two year period, leaves net to the owner of the lease \$4,880.00 for the 2 year period. *This is the leasehold estate which the government's witnesses testified* was of the value of between \$2,700.00 and \$3,315.00, based on potential income for an estimated 10 years of production from the oil well.

Government's Exhibit 8 also furnished a further yardstick for weighing government expert's prognostications. *Subsequent* to September, 1942 (the date of seizure), from October, 1942 to June, 1943, a period of 9 months, the total production was 6,466 bbls. of oil. At the same rate,

the production for one year would be 8,622 bbls. Multiply that figure by 80¢ per bbl. (government's figure on the price of oil) and we get \$6,897.60. 70% or the appellant's portion, amounts to \$4,828.32. Deduct \$1,380.00 for production expense (government's figures) and we have \$2,987.32 net to the lessee. *In other words, the property produced in one year net in dollars and cents, nearly as much as the government experts testified as being the value of the production over a period of 10 years.*

Undoubtedly, the jury did not place much credence in the government's experts especially when the government's own evidence discloses such glaring incredibility.

The evidence of Mr. Crown (his opinion of the value of the lease as being \$11,000, without production equipment) is more nearly in line with the proven facts of the case, and when taken in connection with the other evidence of value, it is certainly sufficient to justify the verdict in the judgment entered thereon.

Certainly the jury was aware of the fact that the appellant having acquired *both* the fee and the leasehold together with the respective rights flowing therefrom, was quite free to then and there shut down or abandon the well, remove the equipment therefrom and sell or otherwise dispose of such items for the cash consideration upon the open market for something in the neighborhood of \$18,000. In fact, it does appear that several oil wells located upon the total area condemned, were shut down by the appellant. [R. 204, 206-207.]

III.

There Was No Authority to Seize Personal Property
or Trade Fixtures as of September, 1942.

(A) THERE IS NO PROOF THAT IMPROVEMENTS WERE A PART OF THE REALTY, AND WERE LEGALLY TAKEN IN SEPTEMBER, 1942.

(B) THE ITEMS IN QUESTION WERE TRADE FIXTURES. THIS FACT MAY BE GIVEN CONSIDERATION AS BETWEEN CONDEMNOR AND CONDEMNEE.

(C) THERE WAS NO LEGAL OR AUTHORIZED SEIZURE OF THE PERSONAL PROPERTY, EQUIPMENT OR TRADE FIXTURES UNTIL OCTOBER OF 1943.

Appellant urges that the "improvements", viz., machinery, trade fixtures and personalty were lawfully taken as of September 28, 1942 for the following reasons:

(1) The "improvements" were fixtures, and

(2) Under the amended complaint filed one year later, such items were brought within the scope of the proceedings as of September 28, 1942.

In one sense, this argument can have little or no decisive bearing upon the main point in issue, in view of the undisputed fact that the equipment, personal property and trade fixtures had substantially the same value on September 28, 1942 as it did on October 12, 1943 (the date of the amended resolution of authority for the taking).

Defendant's position under the issues framed by the pleadings is that there was no authority for the taking of the equipment, etc., under the original resolution of September, 1942, for the reason that the complaint described only "lands"; further, that such authority to take

was not given until October, 1943, under the amended resolution and that consequently, property taken in September, 1942, not described in the resolution or in the complaint was not lawfully acquired until authority therefore was legally given and the property properly described in the complaint.

The trial court admitted testimony of separate value of the equipment, etc. for the above reason. (We have pointed out, however, that such testimony was properly received irrespective of the reason stated by the court.) There being no difference in the value of the property taken under the last resolution as of that date and as of the date of the seizure, to that extent, the question of the date of taking is not material or helpful to the proper decision in this case.

Appellee urges, however, that the trial court was *correct in its reason* for the admission of the questioned testimony.

Appellant seeks to overcome such reason by arguing that the machinery, trade fixtures, etc. were a part of the realty and hence were covered by the original authority to take and the original complaint.

Neither the original letter of authority, the complaint nor the order for possession provided for the acquisition or condemnation of personal property or machinery or trade fixtures. All specifically call for the condemnation of land only.

The amended resolution and the amended complaint specifically describe such items as within the scope of the proceedings.

It would seem clear, therefore, that the present claim that it was the intent from the inception to acquire such items is an afterthought conceived to avoid the possible consequences of the seizure in September of 1942. That such consequences did result see *United States v. Certain Parcels of Land*, 62 Fed. Supp. 1017 (S. D. Cal. 1945).

Paragraph XIV of the amended complaint is quite eloquent of this fact. The allegation is *that an additional amendment would follow if it be ascertained that the items in question were in fact a part of the realty*. When considered along with the fact that *no* such amendment followed either before, during, or after the trial indicates that its purpose was to avoid the consequences which arose from the illegal seizure in the first instance. It furthermore indelibly stamps the *nature* of the questioned property, inasmuch as it *must be assumed* that the appellant did *not* ascertain or contend that the questioned items *were in fact a part of the realty* or fixtures.

Nor did appellant offer evidence on this issue, which was a question of fact. See *Bond Investment Co. v. Blakesly*, 83 Cal. App. 696, 257 Pac. 189. Appellant, in its brief, cites pages 92 and 93 of the record as proof on such issue. Examination discloses that the cited portion of the record is nothing more than a statement of the attorney for the appellant during the trial with which appellee's attorney disagreed. *Such statement is not proof of the fact*.

On the other hand, appellee did prove that the equipment in question was movable from the well and that it was customary so to do. [R. 173.] All witnesses treated the property in question, with the exception of the ir-

removable portion of the casing, as personal property. [R. 135, 223, 305.] Thus on the record, the equipment would appear to be personalty. The intent of the lessor and lessee, has been shown, viz., that the property might be removed by the lessee. [R. 97-199.]

Appellant has cited authority which it contends, upholds the proposition that the questioned property is realty. Among the cases cited is *Corelym v. Baker*, 182 Cal. 168, 187 Pac. 417. Examination of that case discloses that the trial court, found certain oil well equipment to be realty. On appeal, the finding was attacked as being uncertain and consequently the case was remanded for a new trial. (See p. 170 of the court's opinion.)

Appellant has cited the cases of *R. Barcroft & Sons Co. v. Cullen*, 217 Cal. 708, 20 P. (2d) 665, and *Cain v. Whiston*, 58 Cal. App. (2d) 738, 137 P. (2d) 479, to the point that although a mechanics' lien attaches *only* to real property, it will attach to an oil rig when the land on which it stands is separately owned and is protected from a mechanics' lien by notice of non-responsibility filed by the land owner. Appellant vitally misconceives the effect of the above decisions in their application to the mechanics' lien law of the State of California.

A mechanics' lien attaches "upon the property upon which they have bestowed labor or furnished materials." (Calif. Code of Civil Procedure, Sec. 1183.) Thus the decision in *Cain v. Whiston*, *supra*, recognizes that a real property owner cannot relieve "property" or improvements upon which labor or material has been furnished from a mechanics' lien by the filing of a notice of non-respon-

sibility, even though he may do so as to the real estate. *English v. Olympic Auditorium*, 217 Cal. 631. At page 745 of the opinion in the *Whiston* case, the court says:

“Under the holding in the *English v. Olympic Auditorium, Inc.*, *supra*, respondents were not entitled to a lien upon the oil well itself nor upon the real property involved because of the filing of a notice of non-responsibility, but they were entitled to a lien upon that part of the *improvement*, to which they had contributed labor and materials, which was above the surface of the ground * * * The judgment also enforced a lien upon all ‘rig accessories and equipment’ being part of this oil well rig. This is erroneous as it includes, or may include, articles and equipment used in the drilling of this oil well which were not a part of the improvement erected by respondents (materialmen and laborers) and in connection with which they had nothing to do.” (Parenthesis ours.)

Appellant has also cited *Big Sespe Oil Co. v. Cochran*, 276 Fed. 216. While it is true that this Court affirmed the District Court in the setting aside of a Sheriff’s deed on execution on the ground that houses, derricks, tanks and oil wells were real property, that opinion does not disclose the manner of the affixation of said articles, nor whether there was a right of removal of said items. The point was only incidentally involved in the case and is the only case which we have found upholding such theory where the evidence as to the manner of the affixation of said property to the real estate and the intent of the parties does not appear from the opinion.

Appellant has also cited section 7043 of the *California Business and Professions Code*, embracing the licensing

of building contractors, and urges that because such section eliminates an owner or lessee who drills an oil well from the requirement of having a contractor's license, it is indicative that oil well machinery and equipment is realty. This is rather strained reasoning. A building contractor who performs work for others is required to have a license. An owner or a lessee who performs work for himself is not required to have a license and how this provision of law can affect the nature of property as being real or personal property is difficult of discernment. A contractor under the law must have a license whether he builds a building as part of the realty for others, or whether he builds something which is clearly removable from the premises and personalty.

Appellant argues also that the *Public Resources Code of the State of California*, Section 3233, which requires approval of the Oil and Gas Supervisor for removal of any rig, derrick or operating structure upon an oil well, seems inconsistent with the view that such equipment be personal property, and might be said, in the absence of such approval, to be "immovable by law."

Again strange reasoning. Examination of the Public Resources Code discloses that the reason for the requirement referred to is to protect underlying oil stratas and sands from damage or harm by the infiltration of water or other foreign products when an oil well is shut down or abandoned. Indeed the section quoted by its *very terms* contemplates the removal of all such items which can be so removed without damage to the underlying oil structure. In fact, the division of the *Public Resources Code* referred to being Division III, Chapter I is entitled "Oil and Gas Conservation," and contains many require-

ments in both the drilling operation and abandonment of oil wells to accomplish such conservation purposes.

Therefore, having made no proof of the manner of the adfixation, if any, of the equipment to the realty, and it being shown that it was intended to be removed at any time during the existence of the lease, the trial court could not have made a finding that the same was realty. Under the issues raised by the *pleadings*, the burden of proof was on appellant. In this appellant failed.

B.

The Items in Question Were Trade Fixtures.

That the items in question whether affixed or not, were trade fixtures, cannot be doubted. The lessee was permitted to remove *all* equipment placed on the leased property by the terms of the lease under which he held. [R. 97, 199.] Under such circumstances, all such machinery and equipment are trade fixtures even though affixed to the realty.

“The lease usually contains a clause permitting the lessee to remove all machinery and equipment from the land. The courts hold that all machinery as well as casing in the well were trade fixtures and removable by the lessee within the term.” *Summers on Oil and Gas*, p. 276.

The same author on page 644 states . . .

“it is a well settled rule that casing in wells, derricks, engines and other machinery and appliances placed on the land by the lessee for testing, developing and operating the land for oil and gas purposes,

are trade fixtures." See also, *Thornton Oil & Gas*, Vol. 1 (4th Edition), Section 652.

Churchill v. Moore, 4 Cal. App. 219, 88 Pac. 290;

Midland v. Rudneck, 188 Cal. 265, 204 Pac. 1074.

Appellant argues, however, that in condemnation proceedings such trade fixtures are regarded as a part of the realty for the purpose of making compensation.

In the case of *People v. Church*, 57 Cal. App. (2d) Supp. 1032, 136 P. (2d) 139, the court had under consideration a somewhat similar problem, and in a rather extensive and well reasoned opinion points out that such rule as contended for by appellant is not inflexible. The court states:

"While then, as noted in the Seagren case (50 F. 2d 333), *supra*, and as we have just observed, an agreement between landlord and tenant that the latter may remove his fixtures, does not in itself govern the situation as between condemnor and tenant, it is apparently held not to follow that the intention of the tenant himself in installing the fixtures *may be disregarded, even as between himself and the condemnor of his leasehold interest*. What is condemned, in so far as the tenant is concerned, is his leasehold together with his 'improvements pertaining to the realty.' The position of the condemnor is a different one from that of either the purchaser at a voluntary sale or one seeking to realize on some mortgage or other encumbrance that he may hold on the land, in that a condemnor cannot claim to be acting under any possible misapprehension of the effect of a contract. He has made no contract with those whose property he seeks to take. He, therefore, cannot complain if some attention is paid to the purposes for which

the latter has annexed chattels to the land on any theory that he was not advised of those purposes.” (Italics ours.)

The court further states:

“While, however, there are few condemnation cases to be found in the books in which the status of the equipment of filling stations is specifically considered and *United States vs. Seagren*, *supra*, may be, in some sort, the pioneer case on that specific point, there have been many cases in which machinery originally belonging to a tenant but in some degree attached to the realty has been involved in an eminent domain proceeding in which the leasehold has been condemned. Such a case was *Jackson vs. State of New York*, *supra*. A similar case is *In re Mayor of City of New York*, 39 App. Div. 589 (57 N. Y. S. 657.) Others will be found reviewed in the note to *United States vs. Seagren* in 75 A. L. R. pp. 1495 *et seq.* There runs through them the proposition to which we have already alluded, that in a condemnation case the parties do not stand on an equality and that the courts must, therefore, be vigilant to see that no injustice is done the property owner who has no option but to take what is given him. While, therefore, as emphasized in *Jackson vs. State of New York*, a condemnor will not be allowed at its will to take a tenant’s leasehold, surrender to him second hand machinery attached thereto, and pay him only for the value of his term separated from that of his installations, it is not necessarily true, that reciprocally in condemning his leasehold the condemnor can require him to leave machinery which can be readily detached without damage to the property in so far as the purposes are concerned *for which the condemnation is sought*. And as was held *In re Acquiring Property on North*

River, 103 N. Y. S. 908, while in condemning for street purposes land improved with a building erected for a factory it is incumbent on the city to pay for such machinery as has become a part of the building, not even the tenant can require it to pay for such machinery as can be readily removed, and will have a substantial value disconnected from the building. If that be true it is manifest that the condemnor cannot compel the tenant to leave such machinery on the premises."

IV.

No Legal or Authorized Seizure of the Personal Property, Equipment or Trade Fixtures Until October of 1943.

Under the heading that the "improvements were condemned as of September, 1942, under the amended complaint," appellant complains of the refusal of the court to admit into evidence a telegram dated March 26, 1945, from the Assistant Secretary of the Reconstruction Finance Corporation to the Special Assistant to the Attorney General, stating that purpose of the offer was to show the intent of the R. F. C. in adopting the subsequent resolution of October, 1943, as being to ratify prior seizure of the improvements.

If the seizure in September of 1942 was in fact unlawful and without authority, which we believe is evident, we are at a loss to understand how one, and particularly the United States Government, having once committed an unlawful act, can later purge itself thereof by unilateral ratification of its former unlawful act.

Be that as it may, the telegram was clearly inadmissible as containing a bald conclusion of law and as being a self-serving declaration.

The document on its face (see p. 29, App. Br.) states "declaration of taking filed in said proceedings has been *properly* construed by Justice as an adoption and ratification of Defense Plant Corporation in taking possession on Sept. 28, 1942, of the property listed in Ex. C of amended petition."

A construction of the Department of Justice placed upon the acts of the Defense Plant Corporation was certainly not competent evidence to go to a jury. The telegram contains nothing more than a statement of an opinion on *a question of law*. It was for the trial court to determine as a *matter of law* whether or not the amended resolution constituted a ratification, and as to whether or not one who commits a wrongful act can unilaterally ratify such act. As to the question of intent, there were many other methods of proving such intent, if proof of intent was admissible or proper under the facts of the case. It was not for the Department of Justice, or attorneys in the case to testify before the jury as to the legality of the acts in question or the legal effect thereof. That would be to permit the jury to determine questions of law based upon opinion evidence as to legality.

The case of *Rollins v. U. S.*, 23 C. Cls. 106, cannot furnish authority for appellant's position. That case involved the existence or non-existence of a fact or whether a certain act had transpired. The decision did not involve the legality or propriety of such acts, or legal construction thereof.

Appellant also argues that the "improvements were condemned as of September, 1942, under the amended complaint."

We have heretofore pointed out that the original letter of authority, the declaration of taking and the original complaint provided *only* for the taking of lands. It was not until October of 1943 that the resolution authorizing the taking of the "machinery and equipment described in Exhibit C" was adopted. [R. 276-7.] It was not until January of 1944 that the amended complaint described the property being taken as "the personal property and trade fixtures" [R. 26], and "all pipe, machinery, appliances, equipment, tanks, structures, tools, supplies and all other property whether real or personal, etc." [R. 27-28.] The lands were taken for the "establishment of a reservoir for the storing and conservation of natural gas." [R. 5-6.]

In a case involving other parties and property in the condemnation proceeding now before this court, the District Court of the Southern District of California, in considering the question as to whether personal property and oil well equipment were lawfully taken, stated as follows:

"While it is probably true under the broad powers reposed by Congress in the Executive by title II of the Second War Powers Act that the personal property involved in this controversy might have been acquisitioned with the land or acquired as incidental thereto the record evidence before us clearly proves that no such situation existed. As previously adverted to, all of the memorials, instructions of authority and pleadings leading up to and accompanying the acquisition by plaintiff pertain to land and only to land. Nor is there any indication in the resolutions

of the acquiring agency of September 19, 1942 and October 19, 1942, that evince any intention to acquire the personal property in dispute as part of the natural gas storage facility sought through the condemnation proceedings instituted in this court.

“The fair preponderance of the evidence before us establishes, we think, that the present claim that it was the intention from the inception of the project to acquire the personalty, is an afterthought conceived to avoid possible consequence of the seizure of Sept. 28, 1942.”

The court further states:

“The sole method chosen to acquire the necessary war facility to which the action in this court relates, was by condemnation proceedings of the judicial type brought as Title II of the Second War Powers Act specifies in accordance with the Act of August 1, 1888, Title 40, Sections 257, 289, U. S. C. A. One of the jurisdictional essentials of a proceeding and condemnation of the judicial type is that the property sought to be taken shall be described in the petition (complaint). See Section 1244, California Code of Civil Procedure.

“It is clearly established by the record before us that no specification whatever of any personalty was made in any of the proceedings until the month of October, 1943, when, for the first time, an authorization to amend the pleadings so as to include personal property, was given, and it was not until the following January that the amended complaint directed to the acquisition of the personal property in issue, was filed.

“Thus we find that the earliest effectual and authorized acquiring of the personal property by the government was subsequent to the acquiring of a

jurisdiction over the same *res* by the State Court of the recovery actions pending therein. As no other type of authority then judicial has been invoked or applied by plaintiff in the acquisition under consideration, we consider argument and authorities as to the lodgment in the United States of other processes, in eminent domain, as academic and irrelevant to the motion before court." *United States v. Certain Parcels of Land*, No. 62 Fed. Supp. 1017 (S. D. Cal. 1945.)

Appellant states at page 26 of this brief,

"it would be absurd to suppose that the government is thereby seeking to take possession of only the land and not the well casings, derricks and other operational equipment permanently affixed to it; in fact, it would have been physically impossible to do so."

Such operational equipment was not necessarily essential to the purpose of the use of the lands taken, which was the "establishment of a reservoir for the storing and conservation of natural gas." Derricks, oil well equipment and operational equipment were not essential to such purpose. The gas could be stored in the subterranean channels without the oil producing equipment; in fact, many of the wells taken in the proceeding were actually shut down and were not used. The recital in the memorials and letters or resolutions of authority originally adopted when examined in the light of the purpose of acquiring the lands, we assert, is strong and eloquent evidence of the fact that the resolution of October, 1943, and the amended complaint of January, 1944 were clearly after-thoughts.

Appellant has cited the case of *Shoshone Tribe v. United States*, 299 U. S. 476, 496, as authority for its position that, where the original taking of possession was unauthorized, if it is later approved, the approval relates back to the original date which is then considered as the date of taking for the purpose of compensation.

The cited case does not support the appellant in fact or in law, and did not involve an eminent domain proceeding. That was an action by the Shoshone Tribe against the United States based upon breach of a treaty stipulation formerly made between the Tribe and the United States. In other words, breach of contract. Damages were claimed for such breach and the question was as to the proper date for said damages be fixed. The government contended that the year 1878—the date of the breach—was the proper date for fixing the same. The Shoshone Tribe contended that the proper date for fixing damage was 1927, as that was the date of an Act of Congress giving the court of claims jurisdiction to hear and determine the claim against the government.

The Supreme Court speaking through Justice Cardozo, held that the date of the wrongful act was 1878 and that the damage should be determined as of that time. The decision did not involve the question of taking of possession of the plaintiff's lands by the government but rather the government's violation of its treaty obligation wherein it had agreed to the exclusive use and possession of the Shoshone Tribe of certain lands set aside as reservation. The government, in violation of its treaty obligation, has tacitly permitted the Arapahoe Tribe to occupy the portion of the reservation and had failed to protect the Shoshone Tribe as it had agreed to do. The Arapahoe

people entered into possession in 1878. Thus it appears that the case is not authority for appellant's contention.

Nor do we think that the additional authorities cited by the appellant in support of its position, furnish comfort or authority to sustain that position, as examination thereof will disclose.

Conclusion.

It is therefore respectfully submitted that evidence of market value of the equipment, trade fixtures and personal property was, under the facts of this case, properly admitted; that the verdict and judgment are more than supported by the evidence and that no prejudicial error has been shown by the appellant, which would justify a reversal of verdict and judgment entered thereon. The Judgment should therefore be affirmed.

DECHTER, HOYT, PINES & WALSH,

B. L. HOYT and

HARRY A. PINES,

Attorneys for Appellee.

No. 11,282

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA, FOR THE USE OF RECON-
STRUCTION FINANCE CORPORATION, A FEDERAL COR-
PORATION, ACTING IN BEHALF OF DEFENSE PLANT
CORPORATION, A FEDERAL CORPORATION, APPELLANT

v.

SAM BLOCK, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL
DIVISION

REPLY BRIEF FOR THE UNITED STATES

DAVID L. BAZELON,
Assistant Attorney General.

JAMES M. CARTER,
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FILED

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PAUL P. O'BRIEN,



INDEX

	Page
I. The improvements used in producing oil such as well casings and derricks were taken in September 1942.....	1
A. The improvements were condemned as of September 28, 1942, under the original complaint.....	1
B. In any event the improvements were condemned as of September 1942 under the amended complaint...	5
II. The trial court erred in admitting and in refusing to strike separate evidence of the market value or reproduction cost of the oil well improvements.....	6
III. The verdict and judgment are not supported by evidence.....	9
Conclusion.....	10

CITATIONS

Cases:

<i>Big Sespe Oil Co. v. Cochran</i> , 276 Fed. 216.....	4
<i>City of Los Angeles v. Hughes</i> , 202 Cal. 731, 262 Pac. 737.....	5
<i>Cortelyou v. Baker</i> , 182 Cal. 168, 187 Pac. 417.....	4
<i>Forster & Kleiser Co. v. Special Site Sign Co.</i> , 85 F. 2d 742.....	4
<i>John Hancock Mutual Life Ins. Co. v. United States</i> , 155 F. 2d 977.....	3, 4
<i>Parrott Estate Co. v. McLaughlin</i> , 89 F. 2d 188.....	4
<i>People v. Church</i> , 57 Cal. App. 2d 1032, 136 P. 2d 139.....	5
<i>Salt Lake City v. Smith</i> , 104 Fed. 457.....	9
<i>United States v. Certain Parcels of Land, etc.</i> , 62 F. Supp. 1017...	6
<i>United States ex rel. T. V. A. v. Powelson</i> , 319 U. S. 266.....	3
<i>Westchester County Park Commission v. United States</i> , 143 F. 2d 688, certiorari denied 323 U. S. 726.....	4

Statute:

R. S. sec. 954, 28 U. S. C. sec. 777.....	3
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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11,282

UNITED STATES OF AMERICA, FOR THE USE OF RECONSTRUCTION FINANCE CORPORATION, A FEDERAL CORPORATION, ACTING IN BEHALF OF DEFENSE PLANT CORPORATION, A FEDERAL CORPORATION, APPELLANT

v.

SAM BLOCK, APPELLEE

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL
DIVISION*

REPLY BRIEF FOR THE UNITED STATES

For convenience of reference this reply brief will discuss appellee's contentions under the headings of the Government's opening brief.

I

THE IMPROVEMENTS USED IN PRODUCING OIL SUCH AS WELL CASINGS AND DERRICKS WERE TAKEN IN SEPTEMBER 1942

A. The improvements were condemned as of September 28, 1942, under the original complaint

It is the Government's position that the improvements here involved were fixtures which were in legal contemplation part of the real estate (Br. 21-25) and were, therefore, included in the original complaint

as part of the property taken (Br. 25-27). The contentions by which appellee seeks to support a contrary conclusion are, we submit, plainly erroneous.

Appellee asserts (Br. 33-37) that this was a factual question, that the burden of proof was upon the Government and that no evidence was offered to support the Government's claim. On this ground appellee seeks to distinguish some of the authorities relied upon by the Government. And, referring to paragraph XIV of the amended complaint, the Government's contention is asserted to be "an afterthought" (Br. 33) and it is stated (Br. 33) "*it must be assumed that the appellant did not ascertain or contend that the questioned items were in fact a part of the realty or fixtures.*" (Emphasis by appellee.) These assertions are, however, directly contradicted by the record. The telegram, plaintiff's exhibit No 3, which appellee claims was simply a statement of opinion on a question of law (Br. 41), states (R. 77-78) "Some of items included in Exhibit C, including oil drilling equipment, were thought to be part of realty so as to have been acquired upon filing of Declaration of Taking." Nor did the amended complaint constitute a waiver or abandonment of this position. On the contrary, it stated (R. 28):

That plaintiff is unable to determine at this time how much of the property generally described in the last preceding paragraph is to be deemed part of the real property on which it is located, for the reason that plaintiff does not now know the terms of the oil and gas

leases under which said property was placed upon the premises for the purpose of producing oil and gas therefrom; and plaintiff therefore designates all of said property as personal property and trade fixtures, *solely for the purpose of identifying the same as part of the property to be taken in this proceeding*, and will ask leave of Court to amend this complaint accordingly if and when it shall be ascertained that any of the property herein designated as personal property and trade fixtures is, in fact, part of the realty upon which it is located. [Italics supplied.]

The occasion for filing an additional amendment has not yet arisen since the trial court has not determined that the fixtures were part of the realty.¹ The Government's position was thoroughly understood by all parties at the trial and there was no suggestion made that the contention had been abandoned (see, e. g., R. 70).

Appellee's contention that the issue is a factual matter upon which the Government failed to sustain the burden of proof² is likewise fallacious. There is no question of the nature of the property under discussion. It consists of casing in the well, the derrick,

¹ Since the Government's position was perfectly clear throughout the trial the failure to amend would constitute, at most, simply a procedural defect which could be cured at any time by amendment. R. S. sec. 954, 28 U. S. C. sec. 777.

² It is doubtful whether such burden did rest upon the Government since the question here related to the determination of compensation, and, in condemnation proceedings brought by the Federal Government, the burden of proof as to compensation rests upon the condemnee. *United States ex rel. T. V. A. v. Powelson*, 319 U. S. 266, 273 (1943); *John Hancock Mutual Life Ins. Co. v.*

rods, tanks, and other pumping equipment which go to make up a producing oil well (R. 92-93, 112). At the commencement of the argument upon this point the court stated (R. 71, see also R. 72) "This is just a question of law" and the matter was so treated by all parties. Appellee's counsel stated (R. 72):

I am willing to stipulate the proceedings have begun and your Honor is trying that part of the case which is the court's province to decide. In other words, this is a point that the jury has no concern with.

Since all parties treated the matter as presenting simply a question of law, appellee may not now urge a different theory particularly when, if the question had been raised below, evidence as to the character of the property could easily have been presented *Forester & Kleiser Co. v. Special Site Sign Co.*, 85 F. 2d 742, 751 (C. C. A. 9, 1936); *Parrott Estate Co. v. McLaughlin*, 89 F. 2d 188, 190 (C. C. A. 9, 1937). Moreover, the understanding of the parties was clearly correct. The nature of the property was undisputed. It was a pure question of law whether oil production equipment was legally a part of the realty in condemnation proceedings.

Thus the ground upon which appellee seeks (Br. 33-37) to distinguish *Big Sespe Oil Co. v. Cochran*, 276 Fed. 216 (C. C. A. 9, 1921), *Cortelyou v. Baker*, 182 Cal. 168, 187 Pac. 417 (1920)³ and the other authorities

United States, 155 F. 2d 977 (C. C. A. 1, 1946); *Westchester County Park Commission v. United States*, 143 F. 2d 688, 692 (C. C. A. 2, 1944), certiorari denied 323 U. S. 726 (1944).

³The case was remanded solely for the purpose of excluding from the real property certain tools, etc., without affecting the

relied upon by the Government (Br. 21-25) lacks merit. Appellee's remaining contention is that because of the lease clause permitting the lessee to remove this equipment, it constituted trade fixtures which were personal property (Br. 37-40). But as we have already pointed out (Br. 24), the fact that fixtures are, by lease provision, treated as personal property between landlord and tenant does not mean that they are not part of the realty for purposes of condemnation. This was recognized in *People v. Church*, 57 Cal. App. 2d 1032, 136 P. 2d 139 (1943) the principal authority relied upon by appellee (Br. 38-39) where the court repeated the statement made in *City of Los Angeles v. Hughes*, 202 Cal. 731, 737, 262 Pac. 737, 740 (1927) that—

It has often been held that property affixed to land which, as between the parties shall be deemed to be personal property, still retains its natural character of realty as to third persons.

The *Church* case was a suit by the State to recover the value of the equipment of a retail gasoline and oil service station which the lessee had removed when the land was condemned. Plainly, that decision does not support appellee's claim here.

B. In any event the improvements were condemned as of September 1942 under the amended complaint

As we have shown (*supra*, pp. 2-3) inclusion of the equipment as part of the realty was not an after-thought but was contemplated from the beginning of

holding that houses, boilers, and engines were real property (cf. Appellee's Br. 34).

that the highest and best use of the property
removal from the Oil Well of the Trade Fix
Personal Property and Their Sale Upon
Market" (Br. 22). This represents an
appellee to reverse completely the position
of the court below and, hence, the contention
supported by the record.

The evidence does indicate that the bar
oil, divorced from production equipment
As pointed out in the Government
pp. 34, 6-7 appellee's witnesses argued
for the well from a prediction of
anticipated. While the witnesses
figure did not include the equipment
If, admitted the obvious fact that
the production was based on using
the oil out of the ground (Br.
(Br. 22). This argument to the
"you can

this proceeding. This is evident from the fact that physical possession was taken in September 1942 of the equipment as well as of the land on which it was situated (Appellee's brief, p. 2; R. 33, 133, 151); see *United States v. Certain Parcels of Land, etc.*, 62 F. Supp. 1017 (S. D. Cal. 1945). The telegram of 1945 was offered for the purpose of showing that such had been the intention of the acquiring agency. The existence of such intention was purely a fact question in proof of which the telegram was clearly admissible in evidence. Appellee's argument (Br. 40-46) that the amended complaint cannot relate back to the date of the original taking is based upon the assertion that such amendment was an afterthought. Since this assertion is contrary to fact, the argument falls. Moreover, appellee has not referred to any authority nor given any reason why the adoption and ratification of the physical taking of this property did not relate back to the original date of taking. For the reasons stated in the Government's opening brief, pp. 27-30, we submit that, under the amended complaint, the property was taken as of September 28, 1942.

II

THE TRIAL COURT ERRED IN ADMITTING AND IN REFUSING TO STRIKE SEPARATE EVIDENCE OF THE MARKET VALUE OR REPRODUCTION COST OF THE OIL WELL IMPROVEMENTS

Appellee seeks to support the judgment below on the ground that the right to extract oil "had a market value without the existence thereon of production equipment" (Br. 9); that the equipment also had a market value of \$18,000 for the purpose of sale (Br.

10); and that the highest and best use of the property “was Removal from the Oil Well of the Trade Fixtures and Personal Property and Their Sale Upon the Open Market” (Br. 22). This represents an attempt by appellee to reverse completely the position taken in the court below and, hence, the contentions are not supported by the record.

There is no evidence to indicate that the bare right to extract oil, divorced from production equipment, had value. As pointed out in the Government’s opening brief (pp. 34, 6–7) appellee’s witnesses arrived at a value for the well from a prediction of production to be anticipated. While the witnesses asserted that their figure did not include the equipment, Block, himself, admitted the obvious fact that his estimate of future production was based on using the equipment to get the oil out of the ground (R. 151, see also R. 247, 264). In his argument to the jury, appellee’s counsel stated (R. 445) “you can’t have a going well unless you have all this personal equipment.” Appellee’s assertion that the oil well would have value “if there were not one bit of production equipment located thereon” (Br. 26–27) is only true if the anticipated returns would be large enough to justify the expense of placing the equipment there. There is no evidence that such was the case here.

Rather than valuing the equipment on the basis of the cash amount that could be received upon its sale, appellee resisted the introduction of such evidence. The Government sought this information on cross-examination of appellee’s witness Rush. *Ap-*

appellee's counsel objected, stating "This condemnation is taking over an oil well which is the same as a going business. We are not considering here something that has been dismantled or that you can only get upon dismantling" (R. 215). Again *appellee's* counsel said (R. 222) "This isn't a case where the jury is to determine the market value of personal property after it is taken out of a well and to be considered separate from its use in connection with the well." Such was the position taken throughout the trial (see R. 384, 410, 445). We submit that under these circumstances *appellee* cannot now urge that "the highest and best use at the date of taking from a dollars and cents standpoint would be the removal of the trade fixtures from the well and the sale thereof" (Br. 10).

Thus, *appellee's* argument has no tendency to prove that the rulings below permitting admission of evidence of separate value of the elements that were included in the producing oil well were correct. For the reasons stated in the Government's opening brief, pp. 31-35, we submit that they were erroneous. *Appellee* argues (Br. 20-22) that the issue of separate value was tendered by the amended complaint. This is simply another form of the contention that the Government abandoned or waived its contention that separate valuation was not permissible. For the reasons already given (*supra*, pp. 2-3) the contention lacks merit.⁴

⁴ In his statement of the case, *appellee* places emphasis on the fact that certain testimony was not objected to by the Government

III

THE VERDICT AND JUDGMENT ARE NOT SUPPORTED BY
EVIDENCE

Appellee's argument that the verdict and judgment are supported by evidence simply reiterates the theory that the opinion of value of the oil well and of the equipment valued separately may be added together to produce a total (Br. 27). As we have pointed out in the opening brief (Br. 35-39) those two elements represent inconsistent theories and the suggested addition results in double recovery. The various estimates of separate value of the equipment do not represent the cash amount for which it could be sold which was at least $\frac{1}{3}$ less than those estimates which constitute simply a theoretical value in place. Thus, appellee's statement (Br. 30) that appellant could shut down the well, remove the equipment "and sell or otherwise dispose of such items for the cash consideration upon the open market for something in the neighborhood of \$18,000" is not supported by evidence. The only opinion upon this matter was that of appellee's own witness Rush that, eliminating the

(Br. 5, 6). But no argument seems to be made that the Government's contention was thereby waived (see Br. 19). Plainly it was not since the Government's position was made clear to the court at the beginning of the trial (R. 69-133), it was reiterated in objections to evidence and motions to strike (R. 176-179, 211-212, 248, 411, 431-433) and was again asserted in support of the motion for new trial (R. 493-544). Thus, the Government consistently maintained this position throughout the proceedings in the court below and it was so understood by all parties. The question was, therefore, properly preserved for appeal. *Salt Lake City v. Smith*, 104 Fed. 457 (C. C. A. 8, 1900).

casing and liners which could not be removed, the value of the equipment was only \$12,260 (R. 226-228). This estimate made no deduction for the expenses of abandonment involved in such a process, which would total some \$1,600 to \$1,800 (R. 427, 429-430) and does not appear to deduct the expenses of removal.⁵

CONCLUSION

It is submitted that the judgment appealed from should be reversed and the cause remanded for new trial.

Respectfully,

DAVID L. BAZELON,
Assistant Attorney General.

JAMES M. CARTER,
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ROGER P. MARQUIS,
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NOVEMBER 1946.

⁵ The importance of this consideration is shown by Wents' testimony as to the derrick that had it been "down on the ground ready to move to another location it would have sold for \$1,600.00. Had it been standing over the hole requiring its moving, the purchaser would have to pay \$1,250.00" (R. 409; cf. R. 215-217).

No. 11284

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16,

Appellant,

vs.

ESTHER PUPKO,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Affidavit of Mark E. Barth	28
Appeal:	
Affidavit of Mark E. Barth.....	28
Notice of	23
Orders Extending Time to File Record and Docket	24, 25
Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization.....	18a
Certificate of Arrival.....	4
Certificate of Clerk.....	31
Certificate of Loyalty.....	7
Declaration of Intention.....	2
Exhibits:	
U. S. No. 1.....	9
Minute Order Entered September 28, 1945.....	19
Motion for Denial of Petition for Naturalization.....	8
Motion for Order Directing Clerk to Certify Certain Naturalization Records	25
Motion for Order Directing That Document Be Returned to Files and Included as Part of Record on Appeal	27
Names and Addresses of Attorneys.....	1

	Page
Naturalization Petitions Recommended to Be Denied. . .	20
Notice of Appeal.....	23
Order Directing Clerk to Certify Certain Naturaliza- tion Records	26
Order Directing Document Considered by Court and Withdrawn Be Returned to Files and Included as Part of Record on Appeal.....	30
Order Extending Time to File Record and Docket Ap- peal, Filed January 22, 1946.....	24
Order Extending Time to File Record and Docket Ap- peal, Filed March 5, 1946.....	25
Order of Court.....	22
Petition for Naturalization.....	5
Reporter's Transcript of Proceedings.....	32
Testimony on Behalf of Appellee:	
Pupko, Esther—	
Direct examination	32
Testimony on Behalf of Government:	
Parker, Kathleen—	
Direct examination	60
Government's Exhibit No. 1 (In Evidence).....	66
Statement of Points on Which Appellant Intends to Rely on Appeal (Circuit Court).....	67

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ESTHER PUPKO in Pro. Per.

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Los Angeles 38, Calif. [1*]



TRIPPLICATE

(To be given to declarant when originally issued; to be made a part of the petition for naturalization or hereafter in the records of the court)

UNITED STATES OF AMERICA

DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof)

No. 11

In the _____ of _____

(1) My full true and correct name is **ESTHER PUPKO**

(2) My present place of residence is **6612 Paces Street, Los Angeles, California**

(3) My occupation is **Waitress**

(4) I am **22** years old. (5) I was born on **12-8-19**

(6) My personal description is as follows: Sex **Female**, color **white**, complexion **light**, color of eyes **blue**, color of hair **red**, height **5** feet **4** inches, weight **120** pounds, visible distinctive marks **scar on neck**, race **Hebrew**, present nationality **Russian**

(7) I am **not** married, the name of my wife or husband is _____

(8) I have **no** children, and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows: _____

(9) My last place of habitation was **Kisheniv Russia**

(10) I immigrated to the United States under the name of **Pupko, Esther**

(11) My lawful entry for permanent residence in the United States was on **1-16-21** at **San Francisco**

(12) Since my lawful entry for permanent residence I have **not** been absent from the United States, for a period or periods of 6 months or longer.

DEPARTED FROM THE UNITED STATES

RETURNED TO THE UNITED STATES

Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance

(13) I have **not** heretofore made declaration of intention: No. _____

(14) It is my intention in good faith to become a citizen of the United States and to reside permanently therein. (15) I will, before being admitted to citizenship, support and defend the Constitution of the United States and the laws of the same. (16) I am not an anarchist, nor a believer in the unlawful damage, injury, or destruction of property, or sabotage, nor a member of or affiliated with any organization or body of persons teaching or advocating the same. (17) I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me and was signed by me. I do swear (affirm) that the statements I have made and the intentions I have expressed in this declaration of intention subscribed by me are true to my knowledge and belief. SO HELP ME GOD.



Subscribed and sworn to (affirmed) before me in the form of oath shown above in this _____ day of _____, 1921, at _____, California.

Clerk of said Court, at _____, California, June 16, 1921, at _____, same District 42. I have

Certification No. 23-111957 from the Commissioner of Immigration and Naturalization, showing the lawful entry for permanent residence of the declarant above named on the _____ day of _____, 1921, and that the photograph affixed to the duplicate and triplicate hereof is a likeness of the declarant.

[SEAL]

Clerk of the _____

By _____

Form N-518
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Revision of 11-3-41)

c10-1010-1 U. S. GOVERNMENT PRINTING OFFICE

Not less than 2 nor more than 7 years after the date the original of this declaration was made, and after you have lived in the United States for at least 5 years and in the State for at least 6 months, you may file a petition for naturalization (or second papers). You will not be notified by the Government or the clerk of court to file such petition. It will be necessary for you to make application, in person or by letter, to the nearest clerk of court exercising naturalization jurisdiction, or to a representative of the Immigration and Naturalization Service, for an application Form N-400. You should not wait to do this until near the close of the 7-year period, because if you do not file your petition with the court before the end of this 7-year period it will be necessary for you to file a new declaration of intention and wait at least another 2 years thereafter before you can file your petition for naturalization. However, a petitioner for naturalization who is married to a citizen of the United States is not required to make a declaration of intention as a basis for filing a petition for naturalization.

Applicants for naturalization, before being granted citizenship, must satisfy the judge of the naturalization court that they believe in the principles of the Constitution of the United States. The Immigration and Naturalization Service has prepared a citizenship textbook about the Constitution and Government of the United States which may be used by persons who have declared their intention to become citizens and who attend citizenship classes in the public schools. This book and the classes will help applicants to prepare themselves for the duties and responsibilities of American citizenship.

[Endorsed]: Filed Jul. 12, 1944. [3]

No. 23-113957

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

CERTIFICATE OF ARRIVAL

I Hereby Certify that the immigration records show that the alien named below arrived at the port, on the date, and in the manner shown, and was lawfully admitted to the United States of America for permanent residence.

Name: Pupco, Esther

Port of entry New York, N. Y.

Date: January 16, 1921

Manner of arrival: SS France

I Further Certify that this certificate of arrival is issued under authority of, and in conformity with, the provisions of the Nationality Act of 1940, solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof, this Certificate of Arrival is issued
April 29, 1942

(Date)

[Illegible]

District Director of Immigration and Naturalization
By [Illegible]

[Stamped]: Received. U. S. Immigration & Nat'n.
Service. May 14, 1942 District Office Los Angeles
Form N-210 (N.Y.)

Old 161-IM. (N.Y.)

Edition of 1-13-41 [4]

[Endorsed]: Filed Jul. 12, 1944. [5]

vs. Esther Pupko

ORIGINAL
(To be retained by
Clerk of Court)

UNITED STATES OF AMERICA

No. 119

PETITION FOR NATURALIZATION

[Under General Provisions of the Nationality Act of 1940 (Public, No. 853, 76th Cong.)]

To the Honorable the DISTRICT Court of THE UNITED STATES of LOS ANGELES, CAL.

This petition for naturalization, hereby made and filed, respectively shows:

- (1) My full, true, and correct name is **ESTHER PUPKO** (formerly chg to Elaine Parker)
- (2) My present place of residence is **726 N. Van Ness Ave., Los Angeles, Cal.** My occupation is **photographer**
- (3) I am **24** years old. (5) I was born on **Dec. 8, 1919** in **Kishiniv, Roumania**
- (6) My personal description is as follows: Sex **female**, color **white**, complexion **fair**, color of eyes **blue**, color of hair **red**, height **5** feet **4** inches, weight **125** pounds, visible distinctive marks **scar on throat**, race **white**
- (7) I am **not** married, the name of my wife or husband is _____
- we were married on _____ (Date) at _____ (Place or country)
- he or she was born at _____ (City or town) (County, district, province, or state) (Country)
- and entered the United States at _____ (City or town) (County, district, province, or state) (Country) for permanent residence in the United States and now resides at _____ (City or town) (County, district, province, or state) (Country) and was naturalized on _____ (Date) and became a citizen by _____ (Certificate No.)
- (8) I have **no** children, and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows _____
- (9) My last place of foreign residence was **Kishiniv, (Russia) Roumania** (10) I emigrated to the United States of **Le Havre, France** (11) My lawful entry for permanent residence in the United States of **New York, N.Y.** under the name of **Esther Pupko** on **Jan. 16, 1921** on the **SS France** as shown by the certificate of my arrival attached to this petition (Name of vessel or other means of conveyance)
- (12) Since my lawful entry for permanent residence I have **not** been absent from the United States, for a period or periods of 6 months or longer, as

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(13) I declared my intention to become a citizen of the United States on **June 16, 1942** in the **District** Court of **The United States** at **Los Angeles, Calif.** (14) It is my intention in good faith to be

citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty of whom or of which I am a subject or citizen, and it is my intention to reside permanently in the United States (15) I am not, and have not been for the period of at least immediately preceding the date of this petition, an anarchist, nor a believer in the unlawful damage, injury, or destruction of property, or sabotage, nor a disbeliever or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbeliefs in or opposition to organized government (16) I am able to speak the English language (unless physically unable to do so) (17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States (18) I have resided continuously

United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since **Jan. 16, 1921**

and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, **Aug. 3, 1941** (19) I have **not** heretofore made petition for naturalization No. _____

on _____ (Month) (Day) (Year) at _____ (City or town) (County, district, province, or state) (Country) in the _____ (Name of court)

Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: _____

and the same of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention is required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival is required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to _____

Elaine Parker

(22) I, undersigned petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition signed by me with my full, true name: **SO HELP ME GOD.**

Subscribed and sworn to before me this _____ day of _____, 1942.

Esther Pupko
Full, true, and correct signature of petitioner, attested observations

AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Jean Chayot, my occupation is tailor shop prop.
 I reside at 3038 Reed Ave., Culver City, Calif.
 My name is Sally Leonard, my occupation is hawk
 I reside at 3038 Reed Ave., Culver City, Calif.
 I am a citizen of the United States of America, I have personally known and have been acquainted in the United States with Eather Pupco,
 the petitioner named in the petition for naturalization of which this affidavit is a part, since 1 Aug. 1941
 to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date
 and at Los Angeles Co in the State of California continuously since Aug. 1941
 and know that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States,
 well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.
 I do hereby affirm that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief.
SO HELP ME GOD

Jean Chayot Sally Leonard
 Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit
 the Clerk of said Court at Los Angeles, California this 12th day of July
 Anno Domini 1944 I hereby certify that Certificate of Arrival No. 23 113957 from the Immigration and Naturalization Service, showing
 the permanent residence of the petitioner above named, together with Declaration of Intention No. 115937 of such petitioners, is on file
 attached to, and made a part of this petition on this date.

Edmund J. [unclear] Charles B. [unclear] WIS OF THE
Southern District of California 8 DISTRICT
for [unclear] OF THE
OF
CALIFORNIA

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion.
HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

Sworn to in open court, this _____ day of _____, A. D. 19____

By _____

Dep _____

NOTE: In renunciation of title or order of nobility add the following to the oath of allegiance before it is signed: "I further renounce the title (titles) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. _____ of List No. _____ and Certificate No. _____

Petition denied: List No. _____

Petition continued from _____ to _____ Reason _____

6186365

SEP 28 1945

Form N

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Los Angeles District No. 16

Court Number: 246

Petition Number: 119703

CERTIFICATE OF LOYALTY

Whereas the President of the United States, acting under and by virtue of the authority vested in him by Paragraph (d), Section 326 of the Nationality Act of 1940 (54 Stat. 1150; 8 U. S. C. 726), has by Executive Order No. 9372 dated August 27, 1943, excepted from the classification of "alien enemy" all persons whom the appropriate District Director of Immigration and Naturalization shall, after investigation fully establishing their loyalty, certify as persons loyal to the United States; and

Whereas investigation fully establishes that the applicant named below is a person loyal to the United States;

Now, Therefore, I, the undersigned, acting pursuant to and by virtue of the discretion vested in me by the President of the United States in the Executive Order hereinbefore referred to, do hereby certify Esther Pupko to be a person loyal to the United States and as such entitled to exception from the classification of "alien enemy" for the sole and only purpose of applying for naturalization as a citizen of the United States.

In Witness Whereof, I have hereunto set my hand at Los Angeles, California, this twenty-fifth day of April

in the year of our Lord one thousand nine hundred and forty-five.

Albert Del Guercio

ALBERT DEL GUERCIO

District Director of Immigration and Naturalization
Los Angeles District [8]

[Endorsed]: Filed Apr. 26, 1945. [9]

DF-90

In the District Court of the United States,
Southern District, Central Division, at Los Angeles.

In the Matter of the Petition for Naturalization of
ESTHER PUPKO. No. 119703

MOTION FOR DENIAL

To the Honorable, the District Court of the United States
at Los Angeles:

The United States of America moves the Court for an order denying the aforesaid petition for naturalization on the grounds that: Petitioner has failed to establish good moral character for the period required by law.

Dated this 18th day of September, 1945.

For the United States:

ALBERT DEL GUERCIO,

District Director,

Immigration and Naturalization Service,
U. S. Department of Justice

By M. E. Barth

Naturalization Examiner [10]

[Endorsed]: Filed Sep. 19, 1945. [11]

U. S. Exh #1

No. 480

In the City Court of the City of Palm Springs,
County of Riverside, State of California.

The People of the State of California,

Plaintiff,

vs.

Elaine Parker,

Defendant.

1943. Feb. 1. Complaint upon oath made by Ralph Sturkie and filed accusing Elaine Parker of the commission of the offense of violation of Sec. 2, Ordinance No. 126, City of Palm Springs.

Feb. 1. Bail fixed at \$250.00.

Feb. 1. Defendant brought into court and arraigned. Complaint read to defendant and she is informed of her legal rights. Defendant gives her true name as Esther Pupko—complaint amended.

Feb. 1. Defendant pleads: Not guilty.

Feb. 1. Defendant waives a trial by jury.

Feb. 1. Trial set for Feb. 5, 1943, at eleven o'clock A. M.

Feb. 5. Cause called for trial. Consolidated for trial with case No. 481, People, etc. vs. Carole Palmer.

Complaint amended with leave of court, adding Count 2, charging violation Ordinance No. 127, City of Palm Springs.

Defendant re-arraigned. Pleads not guilty to Count 1; guilty to Count 2.

Witnesses sworn and examined by the People:

Ralph Sturkie

Witnesses sworn and examined for Defendants:

Esther Pupko

Carole Palmer

Feb. 5. Verdict of Court: Defendant guilty on both counts.

Feb. 5. Judgment: Wherefore it is by the court Ordered and Adjudged that the said defendant Esther Pupko is guilty of the crime of violation of Ordinance 126 Sub 2 and Ordinance 127 of City of Palm Springs, and that for said offense, said defendant be imprisoned in the county jail, County of Riverside, State of California, for the term of ten days, suspended upon condition defendant departs from City of Palm Springs before o'clock February 1943, and does not return prior to expiration of one year from date hereof.

Done in open Court this 5th day of Feb. 1943.

Guy Pinney

Judge of the City Court.

I hereby certify that the above is a full, true and accurate copy of the docket entries, and all of the same, in the above-entitled action No. 480 in said Court, entitled The People of the State of California, Plaintiff vs. ~~Elaine Parker~~ Esther Pupko, Defendant, as the same appear of record this date in Docket No. 2 at Page 180 of the City Court of the City of Palm Springs, Riverside County, State of California, which said Docket is now in my official custody.

Witness my hand and seal this 21st day of February, 1945.

Guy Pinney

City Judge, City of Palm Springs [12]

ORDINANCE NO. 126

An Ordinance of the City of Palm Springs
Prohibiting Disorderly Conduct.

The City Council of the City of Palm Springs does ordain as follows:

Section 1: No person at any time within this City shall solicit any other person to have sexual intercourse with any person of the opposite sex to whom the person solicited is not married.

Section 2: No person shall occupy or resort to any public park, any of the buildings therein, or to any room, rooming house, lodging house, residence apartment house, hotel or other building within the City with a person to whom he or she is not married, either for the purpose of having sexual intercourse or any other immoral purpose.

Section 3: No person within the City shall cause, procure, induce, persuade, invite, suggest or encourage any other person to patronize a prostitute or house of prostitution or direct or conduct another to a prostitute or place where prostitutes may be hired or obtained. No person within the City shall take, or offer or agree to take another person to any place with knowledge or reasonable cause to believe that such taking, offering or agreeing to take the other is for the purpose of prostitution, or other immoral purpose.

Section 4: No person shall rent, or allow the use of any room or apartment within the City with knowledge that such room or apartment is to be used for the purpose of sexual intercourse between persons who are not married to each other.

Section 5: No driver of any taxicab or other vehicle used to transport persons for hire, shall permit any per-

son to occupy or use such vehicle for the purpose of prostitution or lewdness, nor shall such driver direct, take or transport any person to any building or place, or to any other person, with knowledge or reasonable cause to believe that the purpose of such direction, taking or transporting is lewdness or prostitution.

Section 6: Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Three Hundred (\$300.00) Dollars, or by imprisonment in the Riverside County Jail for a period of not more than three (3) months, or by both such fine and imprisonment. Such person shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provisions of this ordinance is committed, continued or permitted by such person, and shall be punishable therefor as provided in this ordinance.

Section 7: The City Clerk is hereby ordered and directed to certify to the passage of this ordinance and to cause the same to be published once in The Palm Springs Limelight News, a newspaper of general circulation, printed, published and circulated in the City of Palm Springs. This ordinance shall be in full force and effect thirty days after passage.

F. V. SHANNON

Mayor of the City of Palm Springs

Attest:

VIRGINIA R. O'BRIEN,

Acting City Clerk of the City of Palm Springs,
California

I, the undersigned, Acting City Clerk of the City of Palm Springs, California, hereby certify that the foregoing ordinance, being Ordinance No. 126 of the City of Palm Springs, was introduced at a meeting of the City Council of said City held on the 4th day of November, 1942, and was then read in full and was passed at an adjourned regular meeting of said Council held on the 18th day of November, 1942, by the following vote: [13]

Ayes: Councilmen Adams, Connell, Housman, Boyd, Sorum and Mayor Shannon.

Noes: None.

Absent: Councilman Bacon L. Clifton.

I further certify that said Ordinance was thereupon signed by F. V. Shannon, Mayor of the City of Palm Springs, and attested by Virginia R. O'Brien, Acting City Clerk of said City.

Witness my hand and the seal of said City this 19th day of November, 1942.

(City Seal)

VIRGINIA R. O'BRIEN

Acting City Clerk of the City of Palm Springs,
California

I hereby certify that the foregoing ordinance and certificate were published November 20, 1942 in the Palm Springs Limelight-News, a weekly newspaper of general circulation printed, published and circulated in the City of Palm Springs.

City Clerk of Palm Springs, California [14]

In the *Justice's* City Court of the City of Palm Springs
~~Township~~ County of Riverside, State of California

No. 480

The People of the State of California,

Plaintiff,

vs.

~~Elaine Parker~~

Esther Pupko

Defendant

COMPLAINT—CRIMINAL

Ralph Sturkie being first duly sworn, on oath says:

That the crime of a misdemeanor, to-wit: violation of Section 2 of Ordinance No. 126 of the City of Palm Springs has been committed, and that the above named defendant ~~Elaine Parker~~ Esther Pupko is guilty thereof; Committed as follows:

That said ~~Elaine Parker~~ Esther Pupko in the City of Palm Springs in the City of Palm Springs Township in the County of Riverside, State of California, on or about the 31st day of January, 1943, did wilfully and unlawfully resort to a public park, building therein, room, rooming house, lodging house, residence, apartment house, hotel or other building within the City of Palm Springs, to-wit: Room 32, Royal Palms Annex at 226 N. Palm Canyon Dr., with a person to whom said defendant was not married, for the purpose of having sexual intercourse, and for other immoral purposes. [RMS-GP, J]

For a second count being an offense of the same class, to-wit, a misdemeanor, to-wit, a violation of Ordinance No. 127, of the City of Palm Springs, has been committed and that the above named defendant is guilty thereof, committed as follows: the said defendant in the City of Palm Springs, County of Riverside, State of California, on or about the 26th day of January, 1943, did willfully and unlawfully write and allow to be written upon the register of the Royal Palms Hotel Annex, a hotel, the name, quote "Elaine Parker" being other than her true name, the said defendant being then and [2/5/43 RWS GP, J] person engaging and to whom there was furnished a room at said hotel.

Whereof complainant prays that a warrant of arrest may be issued for the said defendant and thathe.... be dealt with according to law.

Ralph Sturkie

Subscribed and sworn to before me this 1st day of Feb., 1943.

Guy Pinney

City Judge, City of Palm Springs
~~Justice of the Peace~~ Township
Riverside County, California

Underscored portion and second paragraph constitute amendment to complaint.

A true copy of the complaint in the above entitled action as amended.

Guy Pinney

City Judge, City of Palm Springs, Riverside County,
California.

Exhibit "B" [15]

ORDINANCE NO. 127

An Ordinance of the City of Palm Springs Requiring
Registration in Hotels and Repealing Ordinance No. 17.

The City Council of the City of Palm Springs does ordain as follows:

Section 1: Every owner, keeper or proprietor of any lodging house, rooming house or hotel shall keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names and addresses upon their procuring lodging or a room or accommodations. Said register shall also show the day of the month and year when said name was inscribed, and the room occupied or to be occupied by said lodger, or roomer or guest in such lodging house, rooming house or hotel. Said register shall at all times be open to inspection by the Chief of Police or any regular policeman of the City of Palm Springs.

Section 2: Before furnishing any lodging for hire to any person in any lodging house, or before renting any room to any person in any rooming house, or before furnishing any accommodations to any guest at any hotel, the proprietor, manager or owner thereof, shall require

the person to whom such lodgings are furnished, or room is rented, or accommodations furnished, to inscribe his name and address in such register kept for that purpose as hereinbefore provided, and shall set opposite said name the time when said name was so inscribed, and also the room occupied by such lodger, roomer or guest.

Section 3: Every person engaging or to whom there is furnished any room or accommodations at a lodging house, rooming house or hotel shall first sign the register and give the information as provided in the preceding sections.

Section 4: No person referred to in the preceding Section three shall write or allow to be written any other than his true name and address upon such registration, nor shall any person write thereon other than the true name and address of any other guest upon such registration.

Section 5: Ordinance No. 17 of the City of Palm Springs adopted August 3rd, 1938, is hereby repealed.

Section 6. The City Clerk is hereby ordered and directed to certify to the passage of this ordinance and to cause the same to be published once in the Palm Springs Limelight-News, a newspaper of general circulation, printed, published and circulated in the City of Palm Springs. This ordinance shall be in full force and effect thirty days after passage.

F. V. SHANNON,
Mayor of the City of Palm Springs.

Attest:

VIRGINIA R. O'BRIEN,

Acting City Clerk of the City of Palm Springs,
California.

I, the undersigned, Acting City Clerk of the City of Palm Springs, California, hereby certify that the foregoing ordinance, being Ordinance No. 127 of the City of Palm Springs, was introduced at a meeting of the City Council of said City held on the 4th day of November, 1942, and was then read in full and was passed at an adjourned regular meeting of said Council held on the 18th day of November, 1942, by the following vote:

Ayes: Councilmen Adams, Connell, Housman, Boyd, Sorum and Mayor Shannon.

Nones: None.

Absent: Councilman Bacon L. Clifton.

I further certify that said Ordinance was thereupon signed by F. V. Shannon, Mayor of the City of Palm Springs, and attested by Virginia R. O'Brien, Acting City Clerk of said City.

Witness my hand and the seal of said City this 19th day of November, 1942.

(City Seal)

VIRGINIA R. O'BRIEN,

Acting City Clerk of the City of Palm Springs,
California.

Form N-400
(Old A-2214)
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Edition of 7-15-42)

TYPE OR PRINT

No. 225-112

Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization

For use in searching records of arrival:

RECORDS EXAMINED

RECORD FOUND

Card index _____
Index books _____
Manifests _____

Place _____
Name _____
Date _____
Manner _____
Marital status _____

Use Form N-215 in issuing certificate of arrival on this application.

(Signature of person making entry)

TO THE APPLICANT; DO NOT WRITE ABOVE THIS LINE. READ CAREFULLY AND FOLLOW THE INSTRUCTIONS ON LAST PAGE HEREOF.
Take or mail this application and your money order to:

IMMIGRATION AND NATURALIZATION SERVICE District Director Date
Los Angeles, Calif. Immigration & Naturalization Service
458 S. Spring St., Roman Bldg.
Los Angeles 13, California

ESTHER DUPUIS residing at 726 N. VAN NUT ST.
LOS ANGELES, CALIF. I desire to file a petition for naturalization.
(City or town) (State) (Number and street)

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence and enclose money order for \$2.50, payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D. C.," in payment thereof.

I submit herewith three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required.

(1) I arrived in the United States through the port of NEW YORK, NEW YORK, on the vessel ESTHER DUPUIS, on JAN 16, 1929.

(If arrival was through Mexico) I arrived at the port of _____ on _____ on the vessel _____.

(2) I have ~~not~~ been absent from the United States as follows: _____

(Dates of departure and return, ports of entry, and names of vessels at other places of arrival)

I have ~~not~~ been absent at any other time.

(3) I have ~~not~~ used another name in this country than that given above. (If so) It was _____ I used that name because _____

(4) The full name of the person shown on my steamship ticket was ESTHER DUPUIS.

(5) I was born in KISHINEV, RUSSIA, on DEC 8, 1891.

(6) My father's full name is/was MAX DUPUIS.

(7) My mother's maiden name was TELLNISA, FANNIG.

(8) (If a married woman) My maiden name was _____

(9) My last foreign residence was KISHINEV, RUSSIA.

(10) The place where I took the ship or train which landed me in the United States was LE HAVERE, FRANCE.

(11) The ticket on which I came to this country was bought at LE HAVERE, FRANCE.

(12) (If arrival by ship) Name of steamship line was FRENCH LINE.

first, second, or third cabin _____ I arrived as a passenger, stowaway, seaman, member of _____

otherwise: PASSPORT

(13) I traveled on (an immigration visa, a passport, or permit to reenter) PASSPORT.

(14) I paid \$1.00 head tax at LE HAVERE, FRANCE, on JAN 8, 1929.

(15) I was examined by United States immigration officers at LE HAVERE, FRANCE.

(16) (If not examined, state why, and the circumstances of your entry) _____

(17) The person in the United States whom I was coming was HARRY LEVONISKY, IN.

(18) The place in the United States which I was going was NEW YORK, N.Y.

(19) The names of some of the passengers or other persons I traveled with and their relationship, if any, are MOTHER, FATHER, AND SISTER ISATE.

(20) In what places in the United States have you resided?

Now York, N.Y. From VAN, 1921 to AUG, 1921
 Los Angeles, CALIF From AUG, 1941 to JUN, 1941

(21) What were the names, occupations, and addresses of your employers during the last 5 years?

1. J. P. ... 2. ... 3. ... 4. ... 5. ...

(22) Do you understand the principles of government of the United States?

(23) Do you fully believe in the form of government of the United States?

(24) Are you ready to answer questions as to the principles and form of government of the United States?
 yourself for an examination on the government of the United States?

(25) Have you read the following oath of allegiance?

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion. So Help Me God.

Are you willing to take this oath in becoming a citizen?

Of what country are you now a citizen or subject?

(26) If necessary, are you willing to take up arms in defense of this country?

Have you ever, during the time this country was at war, deserted the military or naval forces of the United States, or departed from the jurisdiction of the United States to avoid draft into the military or naval forces of the United States?

(27) If not now married, have you ever been married?

(28) Are you a believer in anarchy or the unlawful damage, injury, or destruction of property, or sabotage?
 with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?

(29) Have you ever been an inmate of an insane asylum?

(30) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?

If so, give full particulars

(31) (a) In what place in the United States did you meet for the first time your first witness named on the opposite page?
 How often have you seen this witness each month since the date you first met him (her)?
 At what places?

(b) In what place in the United States did you meet for the first time your second witness named on the opposite page?
 How often have you seen this witness each month since the date you first met him (her)?
 At what places?

(32) Have you ever been deported from the United States, or are deportation proceedings now pending against you?

If so, state all facts

(33) Was your father or mother ever a citizen of the United States?

If so, state all facts

(34) Did you register under the Alien Registration Act of 1940?

If so, state the number of your Alien Registration Receipt Card

(35) Did you yourself fill out this form?

If not, give the name and address of the person who did

I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief

Esther Pupko
 226 J. Van Ness Ave

MAR 4 1941

By [Signature]
 Deputy Clerk

(-1121)

I hereby certify that the foregoing ordinance and certificate were published November 20, 1942 in the Palm Springs Limelight-News, a weekly newspaper of general circulation, printed, published and circulated in the City of Palm Springs.

City Clerk of Palm Springs, California.

Case No. 119703. In re Petn. of Esther Pupko. U. S. Exhibit #1, Date Sep. 28, 1945. No. 1 Identification. Date Sep. 28, 1945. No. 1 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. J. M. Horn, Deputy Clerk. [16]

[Minutes]: Friday, September 28, 1945]

Present: The Honorable Peirson M. Hall, District Judge.

This matter coming on before the Court for hearing on the Petition of Esther Pupko for naturalization; Mark E. Barth, Naturalization Examiner, appearing for the Government; the petitioner being present:

Kathleen Parker is called, sworn, and testifies for the Government.

The petitioner is called, sworn, and testifies.

The petition is ordered granted and the Oath of Allegiance is administered to the petitioner in open court. [21]

Original

Form N-484

U. S. Department of Justice
Immigration and Naturalization Service

(Edition of 9-1-43)

Book 8 Page 340

Date September 28th, 1945 List No. three

This list consists of four sheets. Sheet No. 1.

NATURALIZATION PETITIONS
RECOMMENDED TO BE DENIED

To the Honorable the United States District Court of
Southern District of California sitting at Los Angeles,
California

Kathleen Parker; Homer Terrill; Gerald Bolton; George
Scallorn; Joseph Dummel; Samuel Hozman; Frank Burns;
Ernestine Tolin; Mark Barth; Emanuel Braude; Ed-
ward Davis duly designated under the Nationality Act

(Name(s) of designated officer(s))

of 1940 (54 Stat. 1156) to conduct preliminary hearings
upon petitions for naturalization to the above-named Court
and to make findings and recommendations thereon, has
personally examined under oath at a preliminary hearing
the following seventy-seven (77) petitioners for naturali-
zation and their required witnesses, has found for the
reasons stated below, that such petitions should not be
granted, and therefore recommends that such petitions be
denied.

No.	Petition No.	Name of Petitioner	Reason for Denial
1	2659-M	Victor John Rosi	Petitioner has failed to establish
2			good moral character for the period
3			required by law.
4			
5	109903	Adalbert Frank Horna	Petitioner has failed to establish
6			good moral character for the period
7			required by law.
8			
9	119703	Esther Pupko	Petitioner has failed to establish
10			good moral character for the period
11			required by law.
12			
13	122706	Beatrice Kendall Roy- lance	Petitioner has failed to establish
14			continuous legal residence in the
15			United States for the period re-
16			quired by law.
17			
18	99471	Leslie Frank Meadows	Petitioner Deceased
19	113496	Wilma Rauha Ahlman	Petitioner Deceased
20	104578	Wolfgang Hans Wohlauer	Naturalized Elsewhere
21	107105	Iole Canepari	Naturalized Elsewhere
22	107895	Jack Kestelman	Naturalized Elsewhere
23	R-2430	Virginia Lee Berg	Want of Prosecution
24	3284-M	Walter Henry Watkins	Want of Prosecution
25	3363-M	Hobert Andre Aha- ronian	Want of Prosecution
26	87314	Mary Christine Strut- zel	Want of Prosecution
27	87662	Vilma Hertha Young	Want of Prosecution
28	93749	Gaetano Erbeta	Want of Prosecution
29	95486	Degenhard Von Wurm- brand-Stuppach	Want of Prosecution
30	97556	Hermann Schmitt	Want of Prosecution
31	98050	Lillian Elizabeth Myers	Want of Prosecution
32	98954	Carlota Cross	Want of Prosecution
33	99080	Jesus De La Rosa Luebano	Want of Prosecution
34	99887	Frederick Abel	Want of Prosecution
35	102205	Clara Viola Kleewein	Want of Prosecution

Respectfully submitted,

M. E. Barth

(Signature of officer in attendance at final hearing)

Date September 28th, 1945. [22]

Original

Form N-484-A

U. S. Department of Justice
Immigration and Naturalization Service

(Edition of 5-15-44)

Book 8 Page 343

Date September 28th, 1945. List No. three

This list consists of four sheets. Sheet No. four

ORDER OF COURT

State of California)
) ss:
County of Los Angeles)

In the United States District Court of Southern District
of California

Upon consideration of the petitions for naturalization listed on List No. three sheet(s) 1 to four dated September 28th, 1945, presented in open Court this twenty-eighth day of September A. D., 1945, It Is Hereby Ordered that each of the said petitions be, and hereby is, denied, except those petitions listed below.

Recommendation of Designated Officer Is Disapproved as to the Petitions Listed Below, and each of said petitioners so listed having appeared in person, It Is Hereby Ordered that each of them be, and hereby is, admitted to become a citizen of the United States of America. Prayers for change of name listed below granted, except in petition(s) No.

Petition No.	Name of Petitioner	Change of Name
1 109903—	Adalbert Frank Horna	Albert Frank Horna
2 119703—	Esther Pupko	Elaine Parker
* * *	* * *	* * *

It is further ordered that petitions listed below be continued for the reasons stated.

Petition No.	Name of Petitioner	Cause for Continuance
2659-M	Victor John Rosi	off calendar
122706	Beatrice Kendall Roylance	Continued until October 26, 1945
* * *	* * *	* * *

By the Court

Peirson M. Hall
M.E.B. Judge. [23]

In the District Court of the United States in and for the
Southern District of California
Central Division
No. 119703-PH

In the Matter of the Petition of:
ESTHER PUPKO
for Naturalization

NOTICE OF APPEAL

To: Esther Pupko, petitioner and appellee:

You Will Please Take Notice that Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No.

16, the respondent and appellant herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of the above entitled District Court entered on September 28th, 1945, and from the whole thereof, granting the petition for naturalization of the said Esther Pupko.

Dated: December 26, 1945.

CHARLES H. CARR

United States Attorney

RONALD WALKER and

CLYDE C. DOWNING

Assistant United States Attorneys

By Clyde C. Downing

Attorneys for Respondent

[Endorsed]: Filed & mld. copy to Esther Pupko, petnr.
Dec. 26, 1945. [24]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE RECORD
AND DOCKET APPEAL

Good cause appearing therefor,

It Is Ordered that the time for filing the record and docketing the appeal in the United States Circuit Court of Appeals for the 9th Circuit be, and it is hereby, extended to March 15, 1946.

Dated: This 22nd day of January, 1946.

LEON R. YANKWICH

Judge, United States District Court

[Endorsed]: Filed Jan. 22, 1946. [25]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE RECORD
AND DOCKET APPEAL

Good cause appearing therefor,

It Is Ordered that the time for filing the record and docketing the appeal in the United States Circuit Court of Appeals for the 9th Circuit be, and it is hereby, extended to March 27, 1946.

Dated: This 5 day of March, 1946.

PEIRSON M. HALL

Judge, United States District Court

[Endorsed]: Filed Mar. 5, 1946. [26]

[Title of District Court and Cause.]

MOTION FOR AN ORDER DIRECTING THE
CLERK TO CERTIFY CERTAIN NATURALI-
ZATION RECORDS.

Comes Now Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, and moves the Court as follows: That the Clerk be directed to certify the following documents considered by the Court in the above matter and include said documents in the record on appeal; to wit,

1. Declaration of Intention of the Appellee.
2. Certificate of Arrival Relating to the Arrival of the Appellee in the United States.
3. Petition for Naturalization of the Appellee.

That said appellant on December 18, 1945, filed a notice of appeal and is now in the process of perfecting said appeal, and that it is necessary that the above documents be included in the record on appeal so that the Circuit Court of Appeals may have before it said documents considered by the trial Court in its determination.

ALBERT DEL GUERCIO

District Director, Immigration and Naturalization
Service, United States Department of Justice,
District No. 16

[Endorsed]: Filed Mar. 9, 1946. [27]

[Title of District Court and Cause.]

ORDER DIRECTING CLERK TO MAKE
CERTIFICATION OF NATURALIZATION
RECORDS

It appearing that Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, appellant herein, has filed a notice of appeal on December 28, 1945, in the above matter and is now in the process of perfecting said appeal; it also appearing that under section 341(e) of the Nationality Act of 1940 (Title 8 U. S. C. A. 741(e)) the Clerk is prohibited from making certification of Naturalization records without an order of Court; and said appellant having filed motion for an order directing the Clerk to certify said records, and good cause appearing therefor;

It Is Ordered that the Clerk of this Court issue its certification of the following naturalization records; to wit,

(1) Declaration of Intention of the Appellee,

(2) Certificate of Arrival relating to the arrival of the appellee in the United States,

(3) Petition for naturalization of the appellee; [28] and to be included as a part of the record on appeal herein.

Dated: This 13 day of March, 1946.

PEIRSON M. HALL

Judge, United States District Court

[Endorsed]: Filed Mar. 9, 1946. [29]

[Title of District Court and Cause.]

MOTION OF APPELLANT FOR ORDER DIRECTING THAT DOCUMENT CONSIDERED BY THE COURT AND WITHDRAWN BE RETURNED TO THE FILES TO BE INCLUDED AS PART OF RECORD ON APPEAL

Comes Now Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, appellant herein, and moves the Court for an order directing the Clerk of this Court to file the document designated as "Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization" considered by the Court upon the hearing in the above-entitled matter on Septem-

ber 28, 1945, and withdrawn upon request of the appellant at the time of the hearing. That said appellant filed a notice of appeal herein on December 28, 1945, and is now in the process of perfecting said appeal, and it is necessary that said document be made a part of the record on appeal so that the Circuit Court of Appeals may have before it all of the documents considered by the trial Court in its determination.

ALBERT DEL GUERCIO

District Director, Immigration and Naturalization
Service, United States Department of Justice,
District No. 16 [30]

[Title of District Court and Cause.]

AFFIDAVIT

In the United States of America
Southern District of California, Central Division

State of California)
) ss
County of Los Angeles)

Mark E. Barth, being first duly sworn, deposes and says:

That he was present at the hearing on September 28, 1945 of the petition of Esther Pupko for naturalization, and in his official capacity as Naturalization Examiner of the Immigration and Naturalization Service, United States Department of Justice, he personally questioned the said Esther Pupko in open court before the Honorable Peirson M. Hall, presiding judge of the court;

That during the course of the hearing on the said petition for naturalization the annexed Immigration and Naturalization Service Form N-400, entitled "Application for Certificate of Arrival and Preliminary Form for Petition for Naturalization," which is made a part of this affidavit, was identified by the said Esther Pupko as having been executed by her and was used in evidence during the hearing, and that the said Form N-400 herein referred to is identical with and is the same document used at the hearing and referred to in the reporter's transcript beginning at page 8 and withdrawn from the evidence at his request, with permission of the court at the close of the hearing, as reflected by the reporter's transcript at page 41; [31]

That the affiant, Mark E. Barth, says that he is the person who makes the aforesaid affidavit; that he has read the same and knows the contents thereof; and that the same is true according to the best of his knowledge, information and belief.

MARK E. BARTH

Subscribed and sworn to before me this 12th day of March, 1946.

EDMUND L. SMITH

Clerk U. S. District Court, Southern District of
California

By Geo. E. Ruperich

Deputy Clerk of the United States District
Court

[Endorsed]: Filed Mar. 9, 1946. [32]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Friday, September 28, 1945

Appearances:

For the Government: Mark E. Barth, Esq., Naturalization Examiner.

For the Applicant: In Propria Persona.

Los Angeles, California, Friday, September 28, 1945.

3:30 P. M.

The Court: Which one do you want to take up first, Mr. Barth?

Mr. Barth: We will take up the matter of Esther Pupko.

The Court: Come forward and be sworn.

ESTHER PUPKO,

called as a witness in her own behalf, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: My name is Esther Pupko.

The Clerk: And your residence?

The Witness: 726 North Van Ness Avenue.

The Clerk: Take the stand, there.

Mr. Barth: If the Court please, the recommendation now is based upon the arrest and conviction within the statutory period, at Palm Springs, California, in 1943 of the petitioner. The petitioner was convicted of a city ordinance on a morals charge and of having registered in a hotel under a name other than her own true name.

(Testimony of Esther Pupko) .

The Court: That is the only conviction?

Mr. Barth: That is the only conviction.

The Court: She was convicted of a violation of two ordinances, and but one conviction. [2*]

Mr. Barth: There were two counts on which she was convicted.

The Court: One involving a morals charge, in registration at a hotel. It was the same act, I suppose?

Mr. Barth: No. She registered at the hotel some days prior. The arrest for the morals charge occurred four or five days after her registration there.

The Court: I see.

Mr. Barth: Then on the further ground that the petitioner throughout the proceedings has denied that she had ever been arrested, gave false testimony at the time she filed her petition for naturalization, and until confronted with the evidence that she had been arrested, and she then said that she had determined not to reveal it, feeling that should she do so her application would be denied immediately, but that if she didn't tell us about it she would find out and she would have a chance to explain it.

The Court: This petition was filed under the general provisions of the Nationality Act?

Mr. Barth: Yes, your Honor. The five-year period applies, dating back to July 12, 1939. The petition was filed on July 12, 1944.

The Court: All right. Proceed.

*Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Esther Pupko)

Mr. Barth: For the purpose of the record, your Honor, I would like to introduce at this time into evidence— [3]

The Court: Do you have a lawyer?

The Witness: No, I don't, your Honor.

The Court: Don't you want a lawyer?

The Witness: Well, is there any reason why I can't be my own lawyer and can speak for myself?

The Court: There isn't any reason at all.

The Witness: Thank you.

Mr. Barth: Your Honor, I desire to introduce in evidence a copy of the two city ordinances that the petitioner was charged with, and a certified copy of the complaint filed against the petitioner in Riverside, and a certified copy of the court docket record showing the history of the case.

The Court: You have seen all of these, have you?

The Witness: I don't know whether I have or not, your Honor. I don't know what those are.

The Court: Here is the complaint in the criminal case. You saw that?

The Witness: Yes.

The Court: You have seen the docket record?

The Witness: I don't remember. No, I haven't seen this at all.

The Court: And the ordinance prohibiting disorderly conduct?

The Witness: Well, I—

The Court: Well, let me read this one, and you can read [4] that one (indicating).

(Testimony of Esther Pupko)

The Witness: I understand what it is, though.

The Court: You understand what it is?

The Witness: Oh, I think so. You see, I had an interview with a Mr. Simeral, and at that time he explained to me the facts of the case, because I never did understand them myself quite clearly. Your Honor, may I ask you something?

The Court: In just a minute.

The Witness: Oh, all right.

The Court: Well, you understand that this ordinance here, in Section 2, says that no persons shall occupy or resort to any building or rooming house with a person to whom he or she is not married, either for the purpose of having sexual intercourse or any other immoral purpose. This complaint charges you with resorting at a rooming house, to-wit, room 32, Royal Palms Annex, and so forth, with a person to whom you were not then married, for the purpose of having sexual intercourse. You understand that, do you?

The Witness: Well, the complaint was false; the charge was false.

The Court: You understand the law, and that that is what the complaint states?

The Witness: Yes. I understand that.

The Court: And in the second count it says you registered at a hotel under a name other than your own, in violation of [5] the ordinance at Palm Springs. You understand that?

The Witness: I understand that, although—

The Court: We will come to that later. You understand that?

(Testimony of Esther Pupko)

The Witness: Yes, I do, your Honor.

The Court: Excuse me a moment. All right, proceed.

Mr. Barth: I wish to clarify one point there, your Honor. The docket record shows the complaint was amended.

The Witness: That is true.

The Court: The complaint was amended?

Mr. Barth: At the time of the hearing.

The Court: It says, "Complaint amended with leave of court, adding Count 2, charging violation of Ordinance No. 127 City of Palm Springs," which is the ordinance making it an offense to register in a hotel room under some name other than your own.

Mr. Barth: Does your Honor have the copy of the complaint there?

The Court: Yes. I see the underscoring here, "and for other immoral purposes," but it doesn't say anything in the docket about it.

Mr. Barth: In the certification of the complaint I think that the judge certifies that the amendment was made at the time of the hearing.

The Court: Oh, I see the notation, "underscored portion [6] and second paragraph constitute amendment to complaint."

Mr. Barth: I mention that so as to get the record clear in your mind as to what it is, your Honor.

The Court: Very well.

Now, don't worry. You are going to get a full opportunity to tell your story.

(Testimony of Esther Pupko)

The Witness: Thank you.

By Mr. Barth:

Q. Miss Pupko, on or about July 12, 1944, you filed in this court a petition for naturalization, under the general provisions of the Nationality Act of 1940?

A. Yes, sir.

Q. Now, in connection with that petition you did file prior to that time an application to be used by the Service in connection with your petition?

A. I am sorry, I don't think I understand what you mean.

Q. Did you file, prior to July 12, 1944, an application to be used by the Service in connection with your petition?

A. By the Service?

Q. The Immigration and Naturalization Service?

A. The first time I filed a petition was in New York City, prior to coming to California, but after that I came to California, and under the law you have to reside six months in a state before you can even file a petition. Isn't that true? So I filed a petition here in California. [7]

The Court: He just asked you if you filed it.

The Witness: Yes, I said I did.

Q. By Mr. Barth: I will show you an application form, and ask you if you have ever seen this.

A. Yes, I filled this out myself.

Q. Will you examine that application form on both sides? Is that entirely in your handwriting?

A. Yes, this is my handwriting, my printing, and my signature.

(Testimony of Esther Pupko)

Q. And is this your signature on the reserve side of it, Miss Pupko? A. Yes, sir.

Q. I direct your attention to Question No. 30 on the application form, reading as follows:

“Have you ever been arrested or charged with violation of any law of the United States, or state, or any city ordinance, or traffic regulation? If so, give full particulars.”

There appears the printed answer, “No.” Did you make that answer to that?

A. Yes, I did, but I told Mr. Simeral why I did it, and you stated what the reason was just a few moments ago.

Q. This is the application filed July 12, 1944?

A. That is correct. Your Honor, I explained the reason I did that was because, after all, I don't know the procedure [8] of law, and I didn't know if they would completely abandon my petition if I said that I had been convicted, because I say I was falsely convicted, and I don't suppose the law—I don't know if the law takes that into consideration or not, in the petition for naturalization, but I thought that if I would say, “No,” why I knew that I would be under investigation, and I welcomed that investigation, because I knew if they did investigate they would call me into account to state the facts of the case, which is what I wanted, and which is just what happened.

In my interview with Mr. Simeral I explained all the facts in the case. I explained how I was threatened with arrest by this police officer who tried to force all his attentions on me, and who carried out his threat.

(Testimony of Esther Pupko)

Mr. Barth: May it please the court, we find this situation in some of these cases, but the government is not prepared to retry a criminal case where there is a record of conviction. I do not want to limit the petitioner, but I want to make the objection that this is immaterial.

The Court: Let's proceed with the questioning, and we will get to your side of it when the government gets through with their side.

Q. By Mr. Barth: Now, Miss Pupko, on July 12, 1944, you appeared at the office of the Immigration and Naturalization Service and filed your petition?

A. Yes, sir. [9]

Q. And you appeared with your two witnesses, Jean Chayet and Sally Leonard?

A. Right.

Q. And you were called into an examination room and called before Mr. Davis?

A. Yes.

Q. Did you make a statement?

A. Yes.

Q. At that time you were placed under oath?

A. Yes, I was.

Q. And sworn to tell the truth?

A. Yes, I was.

Q. At that time did he ask you questions concerning that application that has been offered in evidence here, as to your name and address, when you came to this country, whether you were married, and asked you if you had ever been arrested?

A. Yes, he did, and I said, "No."

Q. You said "No"?

A. Yes, sir.

(Testimony of Esther Pupko)

Q. He asked you if you had been on relief?

A. I don't recall his asking that question. Perhaps he did.

Q. He asked you questions about the government?

A. Yes, he asked me questions concerning civic matters. [10]

Q. At the time you answered Mr. Davis, "No," you knew the answer was false, didn't you?

A. Yes, I did.

Q. Now, subsequent to your examination, your witnesses were examined one at a time, weren't they?

A. Yes, they were.

Q. And after they were examined, you all three were called to appear before the Clerk of the United States District Court and were sworn in? A. Yes.

Q. Did you execute the petition for naturalization which you filed on that day? A. Yes, sir.

Q. And after that time you went into a hearing room, after you signed the petition before the clerk you proceeded to a hearing room, you and your witnesses together?

A. I don't recall. I can't seem to remember if we went.

Q. Didn't you go with the two witnesses, and all of you were in a room together?

A. Yes, I remember now. Yes, indeed.

Q. And at that time Miss Parker, the young lady sitting here, examined you? A. No.

Q. Didn't this young lady here examine you?

A. I don't recall it. It is possible [11]

(Testimony of Esther Pupko)

Q. At that time did she give you an oath to tell the truth?

A. I remember we went into a court room, and the judge was a woman, and it might have been the young lady sitting here. I don't remember.

Q. At that time she swore you and your witnesses to tell the truth? A. Yes; yes.

Q. She also swore you to the effect that all testimony given before Mr. Davis had been true? A. Yes.

Q. And did she ask you at that time if you had been arrested?

A. I don't recall her asking me individual questions. She may have, but I don't recall. It seems to me she asked me if I had answered truthfully all questions asked. She may have asked me that question particularly, but I don't recall.

Q. You don't recall whether she asked you or not?

A. No, I don't.

Q. If you had been asked the question, your answer would have been "No"?

A. Well, to tell the truth. I am sorry, now, but you don't know what you would do.

The Court: I think that is speculative, counsel.

The Witness: I don't know what I would have done at the [12] time.

Q. By Mr. Barth: What did she ask you?

A. I think she asked me if all questions I had answered, if I had answered them truthfully, to the best of my knowledge, and I think that was the procedure.

(Testimony of Esther Pupko)

Q. Is that the only thing she asked you?

A. I can't remember, sir, the exact words she spoke to me. That was over two years ago.

Q. Did she ask you any more questions?

A. I can't remember. I do remember her asking me if I answered the questions honestly, and I swore to it, and that one question I had not answered correctly.

Q. Did she ask you if you were married?

A. Well, I remember the examiner asking me that. I can't remember if Miss Parker, you say her name is, if she asked me if I was married.

The Court: Have you ever been married?

The Witness: No, I never have been.

Q. By Mr. Barth: Now, Miss Pupko, what is your occupation?

A. At the present time a photographer. I am employed in a photographic studio as a retoucher and colorist, and I am also a photographer.

Q. You lived in New York for some years?

A. I lived in New York ever since we came to America. [13] I was just out here.

Q. You came to California when?

A. I came to California August 3rd, I think that is the exact date, 1941, and I filed a petition as soon as I came here.

Q. And shortly after you came here, were you employed as a taxi dancer?

A. The reason I took the job, I don't know if it is important, is because I couldn't find any work. Jobs were very difficult to find, and a man accosted me and asked me if I wanted to be a taxi dancer. At first I refused,

(Testimony of Esther Pupko)

but then he said it was perfectly all right, and so I took the job.

Q. You were registered and licensed as a taxi dancer in the City of Los Angeles? A. Yes, I was.

Q. How long did you work at that occupation?

A. I went to work until October, and I must have worked there about five or six months; perhaps less. I am not sure. I don't remember the exact time.

The Court: Where was that, that you worked as a taxi dancer?

The Witness: At the Roseland Dance Hall.

The Court: At the Whizzland?

The Witness: At the Roseland.

The Court: Very well. Go ahead.

Q. By Mr. Barth: Now, Miss Pupko, why did you do down [14] to Palm Springs?

A. At that time I had been working as a waitress in the commissary at Twentieth Century-Fox, and the work was too difficult for me. Well, I didn't have a complete nervous breakdown, but I became ill and needed a vacation. That is the reason I went down there.

Q. And while you were there, did you go to work anywhere? A. Yes, I did. I had to.

Q. Where did you go to work?

A. I went to work at a coffee shop right where I was, at the Royal Palms, and I might state I didn't work—I wasn't employed two hours when the officers whom I would like to tell you about came in.

The Court: Just answer the question. We will let you tell your story later.

(Testimony of Esther Pupko)

The Witness: He said—well, anyway—

The Court: The question is, did you go to work?

The Witness: Yes. I tried to.

Q. By Mr. Barth: Did you work at the Club Cabana?

A. One night. That was the fateful night.

The Court: What were you doing there?

The Witness: In the capacity of a waitress.

The Court: At the Club Cabana?

The Witness: Yes. [15]

Q. By Mr. Barth: Weren't you working as a barmaid? A. Please, may I add this?

The Court: Wait. Just answer the questions.

Q. By Mr. Barth: Were you working as a barmaid?

A. No, not a barmaid, a waitress. That is not the same as a barmaid.

Q. And you worked there the evening you were arrested?

A. That is the evening. That is the same evening, yes, sir.

Q. When you went down to Palm Springs, what name did you register under?

A. Elaine Parker. I had known many people registered at hotels under different names, and I registered under the name of Elaine Parker.

The Court: At the Royal Palms?

The Witness: Under the name of Elaine Parker.

The Court: All the time you were there?

The Witness: Yes, your Honor.

(Testimony of Esther Pupko)

Q. By Mr. Barth: That is the first time you ever used that name?

A. The very first time. Well, I had told friends that I was going to call myself that.

Q. Just answer my question. Is that the first time you ever used that name? A. Yes, sir. [16]

Q. You registered every other place under the name of Esther Pupko?

A. I have never registered any other place under the name of Elaine Parker.

Q. Now, directing your attention, Miss Pupko, to January 8, 1945, do you recall appearing before an officer of the Service, the Immigration and Naturalization Service?

The Court: Pardon me, counsel, before we get away from Palm Springs there. I can't tell from reading this transcript just the thing that she was convicted of. It says she was found guilty on both counts. The first count states that she resorted for the purpose of sexual intercourse and other immoral purposes. Is there any evidence about what the testimony was there?

Mr. Barth: The only evidence we have, your Honor, as to that is the report of conviction.

The Court: What were the other immoral purposes? I mean, do you have any record of it?

Mr. Barth: Your Honor, the only record is the report of the conviction and I have a report of the investigator, as given to the Service by the judge down there, as to what occurred, and we have in the petitioner's statement her version of what happened.

(Testimony of Esther Pupko)

The Court: All right. We will come back to it, then. You were about to go to another phase, I think. [17]

Q. By Mr. Barth: 'Now, Miss Pupko, you knew on these various occasions that you testified under oath, at the time you filed your application or petition for naturalization, that the answer with respect to your never having been arrested was false; isn't that true?

A. I don't think I understand what you mean. Perhaps you can clarify that. The first time I filed a petition I never had been arrested. My answer of "No" to that question was perfectly true.

Q. I am referring to the petition in Los Angeles.

A. Do you mean the first time I filed a petition, for my first papers?

Q. In Los Angeles. A. Or my second papers?

Q. Your second papers.

A. My second papers. You are right. I answer "No," and it was false, to the second papers.

Mr. Barth: That is all, your Honor, all the questions I have to ask.

By the Court:

Q. Now, what about this Palm Springs matter?

A. Well, I would be very happy to tell you the circumstances about it.

Q. All right.

A. I would like to tell you what happened concerning [18] this arrest. You see, I had gone down with my girl friend. Every time I think about it I become very excited. May I have a glass of water?

The Court: Yes. You will get a glass of water for the witness. Do you want an aspirin tablet?

(Testimony of Esther Pupko)

The Witness: No, thank you. Thank you.

By the Court:

Q. First of all, let me ask you—

Q. First of all, let me ask you,— A. I am sorry.

Q. —how old are you now? A. 25.

Q. You are 25 years old? A. Yes, your Honor.

Q. You have never been married?

A. No, your Honor.

Q. With whom do you live?

A. My mother, sitting right there (indicating).

Q. Have you lived with her ever since you have been in California?

A. No, your Honor, because I came here all by myself.

Q. When did she come here?

A. She came in February, 1943, just after the Palm Springs happening.

Q. Until that time you lived by yourself?

A. Yes. [19]

Q. Did you earn a living, or did you have an income?

A. Yes, I always worked.

Q. What was your occupation?

A. First, as has been shown in the testimony, I was employed as a taxi dancer, but there wasn't anything wrong about that.

Q. Just tell us what it was, and I will make up my mind about it.

A. The first thing I did was find employment as a waitress, which I couldn't do.

(Testimony of Esther Pupko)

Q. Whereabouts was that?

A. They sent me to a place on Los Angeles Street.

Q. You went to an employment agency; is that it?

A. Yes, I went to McDonnell's Employment Agency, and they sent me to a place as a waitress.

Q. How did you happen to come out here?

A. Oh, I came—

Q. Did you come with somebody?

A. I came alone, but I had a letter to a dear friend of my aunt's, and I lived with her. She was a woman with a family, a husband and children, and she was very, very sweet to me, and I lived with her.

Q. Now, let's go back here. When you got here, you got a job as a waitress? A. Yes. [20]

Q. And you found you could not do that, and you took a job as taxi dancer?

A. No, after that I took a job in a cosmetic factory.

Q. How long did you have that job?

A. About two weeks.

Q. About two weeks? A. Yes, your Honor.

Q. Then what did you do?

A. Then I had to quit that job, I couldn't do the work, I had to get another job, and then I happened to meet this man, and he asked me wouldn't I like to be a taxi dancer. And as I stated before at first I refused. And he said there wasn't anything wrong with it, there was nothing you had to be ashamed of, and he says, "All you do is dance," and I have always liked dancing, and I had never known what that type of work was, I mean what it was like, so I went up there. And, well, I used

(Testimony of Esther Pupko)

to make an average of about \$25.00 or \$30.00 a week, which at that time, four years ago, was not too bad, and I sent money back home.

Q. Tell me what you did next. How long were you a taxi dancer?

A. I think about six months. I can't remember.

Q. What did you do next?

A. Then after that I took a job as a cashier in the Sunset Bowling Alley [21]

Q. Yes.

A. And I earned \$18.00 a week there. Then I went to a place on Vine Street, which was opening up, that needed waitresses, and I figured as a waitress I could make pretty good money. And I had that job about two months, as a waitress, and at the time of the Palm Springs incident I was working as a waitress.

Q. You went from the Sunset Bowling Allen to Palm Springs, now, did you?

A. No. I can't remember, but I had various jobs, mostly as waitress.

Q. You worked mostly as waitress in different types of places?

A. Yes, because I had no trade at that time.

Q. I see. You worked at the Twentieth Century-Fox, you say, in the commissary? A. Yes.

Q. And you had to quit that?

A. Yes. In fact, every time I took a job as a waitress I had to quit because the work was too hard for me.

Q. Then you went to Palm Springs?

A. Yes, with my girl friend.

(Testimony of Esther Pupko)

Q. What is her name? A. Carole Palmer.

Q. Carole Palmer. Is she here today? [22]

A. No. I haven't seen her for a long time.

Q. Was she a witness too?

A. Yes, sir. Yes, your Honor.

Q. Then you went down to Palm Springs, and after you left Palm Springs, what did you do?

A. Oh, after I left Palm Springs I came back to Los Angeles, and I received a letter from my mother that she was coming out with her sister and her children, so I found an apartment.

Q. Well, did you go to work? What did you do then?

A. Yes. I worked as a camera girl. In this place on Vine Street, when I worked on Vine Street, I met a man who said I would be good as a photographer in a night club. So I went to work for a few weeks, and I didn't work for him very long, and after that I took this waitress job. But after my mother came out, I got in touch with this man again, because I needed work, and he employed me as a camera girl at a pretty good salary.

Q. How much?

A. Well, he gave me \$30.00 a week, but I made bonuses.

Q. Tips, you mean?

A. Yes, but mostly bonuses. The bonus was what I counted.

Q. Where were you working?

A. Taking pictures in a night club. [23]

(Testimony of Esther Pupko)

Q. Of men out with other men's wives?

A. That is correct, your Honor. Then I became interested in photography, and I took it up as my profession, and I am a pretty good photographer.

Q. How long ago was that,—two years ago?

A. Two years ago.

Q. What is the name of the place where you work?
Who is your employer?

A. Well, at the present time I am working at a studio.

Q. Who is your employer now?

A. His name is Charles Craig.

Q. Is that the name of his studio?

A. The studio is the De Ments Studio. I am only afraid I am going to be fired for taking the day off, for this day is a week day.

Q. Are you more worried about that than you are about getting your citizenship?

A. No, your Honor.

Q. Then, if I understand you correctly, ever since you arrived in California in 1941, you have worked continuously and supported yourself?

A. Yes, your Honor.

Q. And you have received no aid or assistance in that respect from any person other than your blood relatives?

A. I have never received assistance from anyone except [24] my mother, because when I didn't work, sometimes she works, and when she doesn't work, I work.

Q. You have supported yourself?

A. Since I was 16 years old.

(Testimony of Esther Pupko)

Q. And in the occupations which you have outlined?

A. Yes, your Honor.

Q. Now, this incident at Palm Springs, do you want to tell me about it?

A. I would like very much to tell you about it.

Q. Go ahead.

A. Well, do I have to wait for questioning?

Q. Tell me about it, what happened.

A. Well, I had been there a week, and I found I was running out of money because I didn't know it was so expensive to live down there. So, as I say, before I took a job in the coffee shop I had been there for two hours when—I am sorry—two officers came in and had me discharged for no apparent reason.

Q. How do you know they had you discharged?

A. Because I saw them talking to the manager, and he called me over and said, "I am sorry, you can't work here any more." I said, "Why?" He said, "I am sorry, but you just can't work any more." But in my heart I knew the reason why.

Q. Did anybody tell you any reason?

A. No one had to tell me. I knew the reason without [25] having any one tell me. After all, there is such a thing as psychology, your Honor.

Q. I didn't know that.

A. I will tell you what the reason was.

Q. Not unless you saw somebody do something—

A. It refers to the case.

Q. —or unless it was something somebody said to you.

(Testimony of Esther Pupko)

A. Then just suppose we forget about it. You see, I was with my girl friend, and she had gone out with a man who said he was the manager of a club, and he took us around, and he took us to an Inn, and it started to pour down rain. Now, here is the way I happened to meet this police officer. My girl friend and I had gone down there—

Q. What police officer?

A. That is what I am coming to. My girl friend and I had gone down to Palm Springs the week before to see how we liked it. We took the bus or train and we found ourselves stranded because there was no place to register for the night. So we went to the police station, and we met a police officer whose name I don't remember. He said, "You drive around in my car until the train leaves for Los Angeles." He says, "I have to go out on my beat," and he took us along, and I thought at that time that was very nice of him. So then we took the train back, and went back to Los Angeles. The next week I said, "Well, I think Palm Springs is very nice." So we went [26] down again, and I took \$40.00 with me exactly, it was all I had, and I registered under the name of Elaine Parker. I never thought that was a misdemeanor, your Honor, because I had known people were registered at a hotel under different names, but it might have been against the law.

Q. You go ahead and tell me what happened, not what you thought.

A. Anyway, this was about four days after we had arrived, and as I said, my girl friend and I were in this place, and it started to pour down rain, and there was

(Testimony of Esther Pupko)

no way for us to get back to the hotel, and this policeman happened to come around, and he said, "I will take you back home, if you want to go." I said, "Fine." And my girl friend, she said, "I will stay for a while yet." So Harry, this other man, he said, "I will take Carole home." So I accepted the police officer's invitation, from the Carolina Inn, that is where we were,—

Q. To do what? A. To go home.

Q. From the Carolina Inn? A. Yes.

Q. And where was the fellow who brought you there?

A. He was still there. His name was Harry, and they wanted to stay, he and my girl friend wanted to stay. There were more people there, and they were having fun. Everybody [27] was in the lobby waiting for the rain to stop for them to go home, but I was in a hurry, and as he was nice enough to take me home, I went. But he didn't take me home. He stopped, and he tried to force his attentions upon me. And I asked him if that was nice of him, and said, "After all, you are a police officer." He said, "What did you come here for?" And I said, "I came because I had a nervous breakdown and needed a vacation." He said, "Well, that is all right," but he still tried to force his attentions on me. And before that he told me he was unmarried, when afterwards I found out that he was married and had a child in the Riverside Hospital. When I refused his attentions, he said, "I will fix you. I will get you in trouble for this. What did you come out here for?" And I became very angry, and I said, "You let me out of here."

Anyway, I think it was the day after that I went into this coffee shop for employment, and was hired, and

(Testimony of Esther Pupko)

then I hadn't been there two hours when the two men came in, and I was discharged. That is the reason I surmised what the reason was.

Q. All right. Now, let's get down to this incident.

A. This was on a Saturday night, when this happened, and I was becoming, well,—

Q. Tell me what happened, not what you were becoming.

A. I didn't have much money, and I was afraid I might not be able to get back to Los Angeles, and I didn't want to [28] be stranded in Palm Springs.

Q. All right.

A. I am sorry. I am sorry. Please forgive me.
(Witness weeping.)

The Court: Just a moment. We will take up fixing the time for hearing these other cases.

(Discussion with reference to other cases.)

Q. By the Court: All right. Will you continue now?

A. Well, I will start with Saturday night. This was Saturday night, and I decided that I might not have sufficient funds to get back to Los Angeles with, so I decided to take a job. So I went into the Club Cabana and asked the manager if I could have a job as a waitress, which he gave me. So that evening my girl friend, Carole, went to the movies and I went to work. While I was working two Army officers came in, and I found out one of them was from New York City, from the Bronx, to be exact, and we started talking about New York, and they were very friendly, and, of course, very gentlemanly. And they waited around until 12:00 o'clock,

(Testimony of Esther Pupko)

they wouldn't leave. At 12:00 o'clock I started to go home, and they followed me and asked me if I would allow them to take me home, and I said, "I only live next door at the Royal Palms." They said, "Please let us take you anyway." And in the lobby I said, "Well, now, I must go up." They said, "Please allow us to walk up to the door with you." [29]

Q. And the long and short of it is that they wound up in your room?

A. No, your Honor, they didn't wind up there because when they got to my door, when I got there, my girl friend was in bed, and she said, "I am hungry." And I said,—I introduced her to the boys. The boys were still outside, and so one of them said, "Well, I will get a sandwich for you." So they both walked away, and while they were away, I said to my girl friend, "Now, they are gone, I will get undressed, so I will have a good excuse so they won't come in." So I put on pajamas and a housecoat over that, and, as a matter of fact, the boys had told me that they were due at a place, a desert center, at 6:00 o'clock in the morning, and they even had their motorcycle, so they could not have stayed very long anyway. And when they came back I did allow them to come in to say goodnight, and before I knew it the door was pounced upon, and in came the police officers and arrested me for resorting, whatever that is.

Q. Did these two soldiers appear and testify?

A. No, I never saw them again.

Q. Did they appear at the trial? A. No.

Q. Who appeared at the trial as witnesses?

A. Nobody.

(Testimony of Esther Pupko)

Q. Didn't the policemen? [30]

A. Oh, I am sorry, the policemen, yes. And that is what I wanted to say. At the trial the policemen were questioned, and you even might call it perjury, I don't know, but the police officers, especially one of them, gave testimony that my—well, actually it might not be perjury, but they did withhold evidence that would have been in my favor, but they purposely withheld that evidence so as to make us appear guilty, and to me that was a very important factor, your Honor.

Q. I see.

A. Besides that, they took us—well, to me I understood the whole thing was a frame, and only because he wanted to get us in trouble, because when they took us to the police station, they made a huge joke out of it, and laughed, because to them it was a great farce.

The Court: Any other questions?

Mr. Barth: Just one or two, your Honor.

Q. By Mr. Barth: I didn't quite understand, Miss Pupko, who the man was that you said made advances towards you? A. He was a police officer.

The Court: The police officer who had driven you and your girl friend around the week before?

The Witness: Yes, sir.

The Court: And who was taking you home alone that night, leaving the other girl with your boy friend? [31]

The Witness: He wasn't a boy friend. He was almost a perfect stranger to me.

The Court: But he was the fellow that took you there?

The Witness: Yes.

(Testimony of Esther Pupko)

Q. By Mr. Barth: And this is the same police officer—

A. Yes, sir.

Q. What is his name? Harry?

A. No, Harry was the man who was the manager of the club, who had taken us there. The police officer I never saw that night until he offered to take me home. I had met him the week before.

The Court: Do you know the names of the two soldiers?

The Witness: I don't know anything about them.

The Court: Do you know their names?

The Witness: I don't know their names, your Honor.

The Court: Did you know their names that night, or any names they gave you?

The Witness: They did introduce themselves to me, but I can't remember what their names were.

The Court: All right.

The Witness: For all I know, they may even have been planted to get us into trouble. I don't know. I wouldn't swear to that because I have no proof. They arrested us without proof, without anything. They just came in, and when I was arrested, I was standing. Of course, my girl friend was [32] in bed, but I had my pajamas and housecoat on, and the boys were fully dressed. They had no reason, no right to say we had intended to resort.

The Court: Have you any more facts to tell me, without any more argument from you?

The Witness: Well, there is a lot I could say. That hurt me deeply.

(Testimony of Esther Pupko)

The Court: I understand about that, but I am talking about any other facts. You have told me.

The Witness: Your Honor, there is only one more thing. I understand that I was not the only one that had happened to.

The Court: I am not interested in that. Policemen don't go around framing people.

The Witness: I discovered there were some girls.

The Court: No, you just tell me your story, and I will make up my mind about it.

The Witness: Yes, your Honor.

The Court: Do you have anything else to say? Do you have any other facts at all?

The Witness: Only the fact that I have never done anything.

The Court: All right. You may step down.

(Witness excused.)

The Court: The character witnesses for this petitioner, they have been examined, have they? [33]

Mr. Barth: Yes.

The Court: And they speak well of her character?

Mr. Barth: Yes. I would like to place Miss Parker on the stand, your Honor, to testify as to the false testimony of the petitioner before her.

The Court: Oh, I assume it is true that she made the false oath there, but if you want to make your record, you may do so.

The Petitioner: Your Honor, I explained to Mr. Simeral the reason.

The Court: I know, and you have explained it here. You have explained it about three times.

Mr. Barth: I should like to put Miss Parker on the stand, your Honor, because the petitioner denied it, I believe.

The Court: Oh, I understood the petitioner admitted it.

Mr. Barth: She wasn't sure whether Miss Parker had asked her that question or not.

The Court: I see. Call your witness.

KATHLEEN PARKER,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name, please.

The Witness: Kathleen Parker.

The Clerk: Your office address?

The Witness: Pardon?

The Clerk: Your office address?

The Witness: Room 100 Rowan Building.

By Mr. Barth:

Q. Miss Parker, you are employed by the Department of Justice, Immigration and Naturalization Service?

A. Yes, sir.

Q. You were so employed on or about July 12, 1944?

A. Yes.

Q. At that time you were acting as a designated examiner?

A. Yes, I was.

(Testimony of Kathleen Parker)

Q. I show you a certificate of petition relating to one petitioner, Esther Pupko, No. 119703, and ask you if you have ever seen that before.

A. Yes, I was the designated examiner when that petition was filed.

Q. At that time did the petitioner and the two witnesses appear before you? A. Yes.

Q. And was the petitioner sworn to tell the truth at that time? A. Yes, she was.

Q. And the witnesses were placed under oath as well?

A. The witnesses also. [35]

Q. At that time did you conduct a preliminary hearing of the facts set forth in that petition on the reverse side thereof? A. Yes, I did.

Q. And during the course of the examination did you ask this petitioner if she had been arrested?

A. Yes.

Q. And what was her answer?

A. Her answer was, "No."

Q. Did you interrogate the witnesses with reference to this petitioner? A. Yes.

Q. Did they say the petitioner had been arrested or not? A. Not to their knowledge.

The Court: Is there any record or was there any record before the Naturalization Examiner or yourself, or any records in the file, that this petitioner at any other time has engaged in the act of resorting or has at any time been engaged as a prostitute?

The Witness: No.

The Court: There is not?

(Testimony of Kathleen Parker)

The Witness: No.

The Court: Very well.

Mr. Barth: That is all, your Honor, except I would like to make a few remarks. [36]

The Court: All right. Step down.

(Witness excused.)

Mr. Barth: The point that strikes me in this matter, your Honor, is the falsity of the testimony given by the petitioner. It is apparent that she signed her application in July, 1944, and that she at that time determined not to reveal the arrest to the Immigration and Naturalization Service, and evidenced that intention by filing an application to file a petition in which she answered the question as to whether she had ever been arrested, "No."

Carrying out that plan, when she was sworn on two occasions on July 12, 1944, and asked that question, she again answered, "No."

Now, there are two things that might have happened. She may have figured that the arrest occurred in Palm Springs and if it were not discovered, then there would be nothing to be brought to her attention, and if it were discovered, then she would have her explanation ready.

Now, the cases hold, and I think they are legion, that it is the duty of the petitioner in her application for naturalization, and for anyone who is seeking the privilege of citizenship, not to give false testimony. The burden is not on the government to find out whether she has testified falsely or not.

Now, it seems to me that the petitioner had not told us [37] all about herself, and did so knowingly and

wilfully, and by so doing she has not met the requirements of moral character that are contemplated by the Naturalization Statute. I can refer your Honor to the case of—

The Court: Well, there is a great deal of authority for that, I know.

Mr. Barth: I am referring to cases where there have been arrests.

The Court: I know, but it poses a rather difficult problem. I think it speaks somewhat in favor of the qualifications for citizenship if she does not want to disclose she was arrested for resorting. There is no record that she was a professional prostitute or even a loose woman, other than this one incident, and which, apparently, has been very shocking and upsetting to her.

Mr. Barth: Well, it seems to me that no matter what the acts were, who the persons were, it seems to me that the important thing is that she knew what it was to take the oath. She is a smart girl and she could have explained all these things to us just as well at the time she filed the petition rather than to wait to find out whether it would be uncovered. Now, we found it out, and, mind you, only by reason of the fact that she was considered a citizen of Rumania and, therefore, had to be investigated under Section 326 of the Nationality Act, which entails securing an F.B.I. report. That was the [38] first notice we ever had that she had been arrested. Otherwise we would have taken her statement, her testimony, as true. There was no other record. She testified to nothing that would indicate that she had been arrested. We found it out, as I said, solely because she came under Section 326, and then the matter was

further investigated. Now, if we hadn't had that investigation, the case would have been recommended, probably, because we do not check police records unless we have some reason to believe a person has been arrested or something else comes to our attention to get us interested.

Now, it seems to me that these petitioners should be frank and answer all questions truthfully, and had she done so, she would have been accorded an opportunity to explain at the time, and, in fact, better then than later.

I submit, your Honor, that she has testified falsely before, and I think the petition should be denied on that basis.

The Petitioner: Your Honor, may I say something?

The Court: Go ahead.

The Petitioner: I would like to state that at the time I made that falsehood, there was no doubt in my mind that I was going to be investigated. Mr. Barth is trying to make it appear that I may have had a plan to conceal that evidence, which is not so, your Honor, because I didn't know at that time that I was going to be classified the way he says, as a [39] Rumanian. How would I know? But there was no doubt in my mind that they were going to find out, and I was hoping they would find out and that if they would really investigate deeply into it they might find out why the police officers are going around making those false arrests. Perhaps I should not be concerned with others, that I should be only concerned with myself, but I will say if I was concerned only with myself that I was hoping that they would find out that it was the police officer that had seen to it I was put in trouble.

The Court: Now, you don't help your case any with me by continually referring to false arrests by policemen. I know a lot of them do a lot of things, but, as I say, you are not helping your case.

The Petitioner: I am only trying to make the court understand.

The Court: Well, Mr. Barth, I think I am going to grant the petition. I think the woman is subject to a very severe condemnation, but I am going to grant the petition.

Now, are you going to complete this naturalization now? In other words, shall we administer her oath now? Who is going to handle this next matter?

Mr. Barth: I am going to, your Honor.

The Court: Then you are going to remain here?

Mr. Barth: I will, yes.

The Court: I thought if you wanted to complete this, [40] the oath could be administered and she could go into the clerk's office. I will administer the oath to her. Of course, you may want to take an appeal in this case.

Mr. Barth: I should like to. I should have to submit the matter, of course, your Honor, to learn what the decision of the Service will be.

The Court: I will administer the oath.

Mr. Barth: I assume in these matters the exception is automatic?

The Court: An exception is noted.

(Thereupon the oath was duly administered.)

Mr. Barth: At this time, with the permission of the court, may I withdraw the application?

The Court: Certainly. All the material here, if you wish.

Mr. Barth: I would prefer to leave the other matters in evidence.

The Court: All right. They will be numbered Government's Exhibit No. 1, all of them.

(The documents referred to were marked as Government's Exhibit No. 1, and were received in evidence.)

Mr. Barth: That is all.

[Endorsed]: Filed Mar. 19, 1946. [41]

[Endorsed]: No. 11284. United States Circuit Court of Appeals for the Ninth Circuit. Albert Del Guercio, District Director, Immigration and Naturalization Service, United States Department of Justice, District No. 16, Appellant, vs. Esther Pupko, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed March 27, 1946.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit
No. 11284

In the Matter of the Petition of
ESTHER PUPKO,
For Naturalization.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

The points upon which appellant intends to rely in this appeal are as follows:

The Trial Court erred:

(1) In finding that appellee during the five years immediately preceding the filing of her petition for citizenship was a person of good moral character as required by Section 307 of the National Act of 1940 (8 U. S. C. A. 707).

(2) In finding that the concealment by the appellee of her arrest and conviction of a crime within the statutory period did not constitute bad moral character.

(3) In granting citizenship to appellee.

Dated: This 25th day of March, 1946.

CHARLES H. CARR

United States Attorney

RONALD WALKER and

CLYDE C. DOWNING

Assistant United States Attorneys

By Clyde C. Downing

Assistant United States Attorney

Received copy of the within statement of points on which appellant intends to rely on appeal on this 25 day of March, 1946. Morris Lavine, Attorney for Appellee.

[Endorsed]: Filed Mar. 27, 1946. Paul P. O'Brien, Clerk.



IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director, Immigration and
Naturalization Service, United States Department of
Justice, District No. 16,

Appellant,

vs.

ESTHER PUPKO,

Appellee.

APPELLANT'S BRIEF.

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FILED

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PAUL P. O'BRIEN,

CLERK

TOPICAL INDEX

	PAGE
Jurisdiction	1
Statutes involved	2
Statement of the case.....	4
Summary of facts.....	5
Questions at issue.....	7
Argument	8
Required proof of good behavior during the prescribed proba- tionary period of residence.....	8
False statements in naturalization proceedings.....	11
Conclusion	16

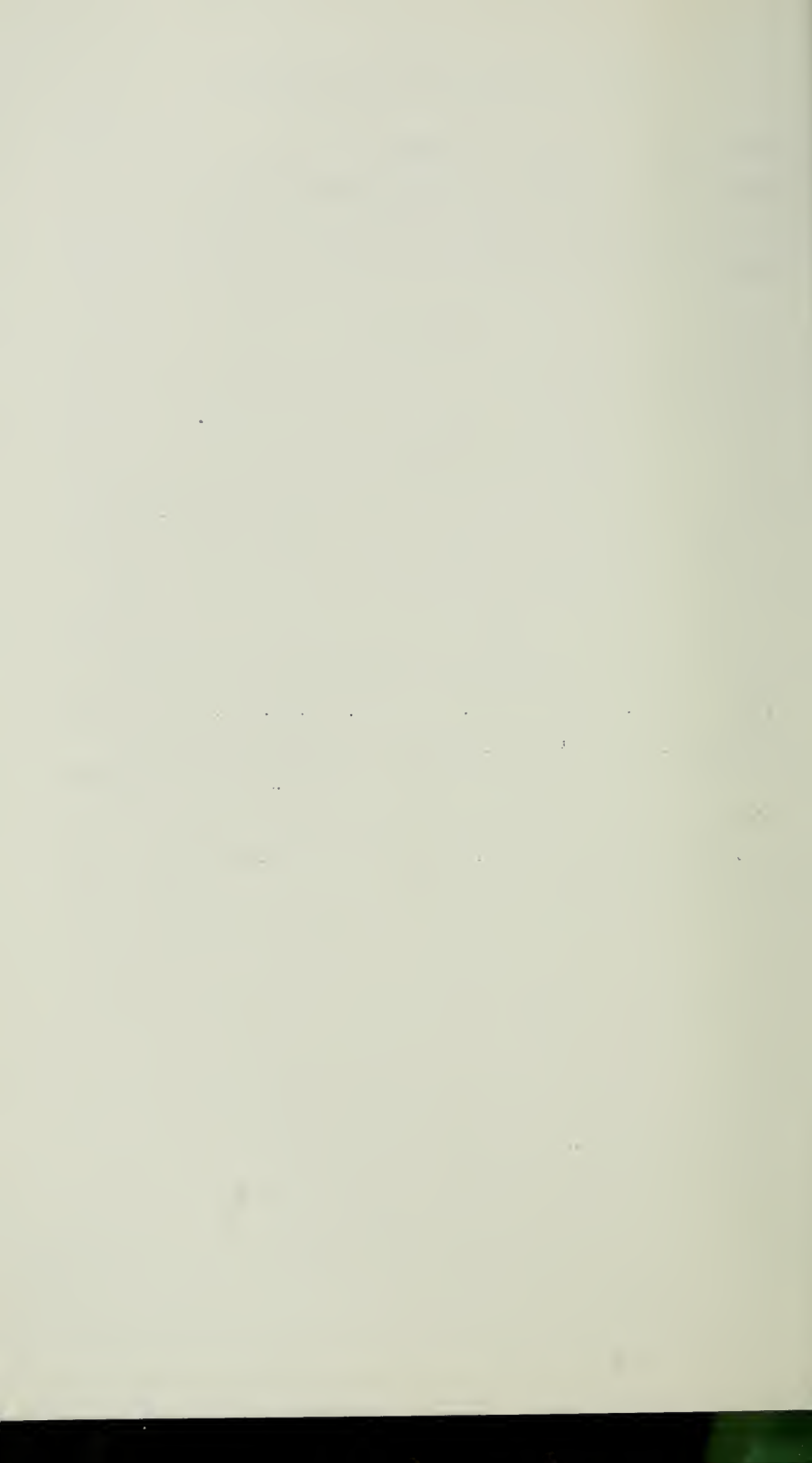
TABLE OF AUTHORITIES CITED

CASES.	PAGE
Estrin v. United States, 80 F. (2d) 105.....	10
Knauer v. United States, 66 S. Ct. 1304.....	12
Maney v. United States, 49 S. Ct. 15, 278 U. S. 17, 73 L. Ed. 156	9
Nosen, In re, 49 F. (2d) 817.....	9, 10
Nybo, In re, 42 F. (2d) 727.....	9
Oganesoff, Petition of, 20 F. (2d) 978.....	9, 11
Polivka, Application of, 30 F. Supp. 67.....	11
Talarico, In re, 197 Fed. 1019.....	13, 15
Tutun v. United States, 270 U. S. 568, 46 S. Ct. 425, 70 L. Ed. 738	2
United States v. Albertini, 206 Fed. 133.....	13
United States v. Brass, 37 F. Supp. 698.....	13
United States v. Chiaravalle, 45 F. Supp. 509.....	13
United States v. Clifford, 89 F. (2d) 184.....	10
United States v. De Francis, 50 F. (2d) 497.....	14
United States v. Etheridge, 41 F. (2d) 762.....	13, 14
United States v. Ginsberg, 37 S. Ct. 422, 243 U. S. 472, 61 L. Ed. 853	9
United States v. Goldstein, 30 F. Supp. 771.....	13
United States v. Mancini,, 29 F. Supp. 44.....	15
United States v. Manzi, 48 S. Ct. 328, 276 U. S. 463, 72 L. Ed. 654	9
United States v. Marcus, 1 F. Supp. 29.....	13
United States v. Mira, 41 F. Supp. 224.....	13
United States v. Ness, 38 S. Ct. 118, 245 U. S. 319, 62 L. Ed. 321	12
United States v. Rodiek, 162 Fed. 469.....	2
United States v. Rutman, 27 F. Supp. 891.....	13

United States v. Saracino, 43 F. (2d) 76.....	15
United States v. Sherman, 40 F. Supp. 478.....	9
Vasicek, In re, 271 Fed. 326.....	9
Zycholc, In re, 43 F. (2d) 438.....	13

STATUTES.

Act of March 26, 1790 (1 Stat. 103, 104).....	8
Act of January 29, 1795 (1 Stat. 414).....	8
Code of Federal Regulations, Title 8, Sec. 370.1.....	4
Judicial Code, Sec. 128 (28 U. S. C., Sec. 225(a)).....	2
Nationality Act of 1940, Sec. 301(a), (54 Stat. 1140; 8 U. S. C. 701)	1
Nationality Act of 1940, Sec. 301(d), (54 Stat. 1140; 8 U. S. C. 701)	2, 9
Nationality Act of 1940, Sec. 307 (54 Stat. 1142; 8 U. S. C. 707)	1
Nationality Act of 1940, Sec. 307(a), (54 Stat. 1142; 8 U. S. C. 707)	2, 7, 8
Nationality Act of 1940, Sec. 333(a), (54 Stat. 1156; 8 U. S. C. 773)	3
Nationality Act of 1940, Sec. 334(a).....	3



No. 11284.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director, Immigration and
Naturalization Service, United States Department of
Justice, District No. 16,

Appellant,

vs.

ESTHER PUPKO,

Appellee.

APPELLANT'S BRIEF.

Jurisdiction.

The petition of the appellee for admission to citizenship under Section 307 of the Nationality Act of 1940 (54 Stat. 1142; 8 U. S. C. 707), was filed in the United States District Court on July 21, 1944 [R. 5, 6].

The jurisdiction to naturalize aliens as citizens of the United States is conferred upon the District Courts by Section 301(a) of the Nationality Act of 1940 (54 Stat. 1140; 8 U. S. C. 701).

The decision of the District Court granting the petition and admitting appellee to citizenship was entered on September 28, 1945 [R. 22, 23, 65]. Notice of appeal was filed in this Honorable Court on December 26, 1945 [R.

23, 24], and the transcript of record was filed on March 27, 1946 [R. 66].

Jurisdiction is conferred upon this Honorable Court to review the final decisions of the District Courts of the United States by Section 128 of the Judicial Code, as amended (Title 28, U. S. C., Sec. 225(a)), wherein it is provided that "the Circuit Courts of Appeal shall have appellate jurisdiction to review by appeal final decisions * * * in the district courts," except as otherwise provided.

The order of the District Court in granting the petition and admitting appellee to citizenship is a final decision within the meaning of the above section.

Tutun v. United States, 270 U. S. 568, 46 S. Ct. 425, 70 L. Ed. 738;

United States v. Rodiek, 162 Fed. 469 (9th Cir.).

Statutes Involved.

Section 301(d) of the Nationality Act of 1940 (54 Stat. 1140; 8 U. S. C. 701) provides:

"A person may be naturalized as a citizen of the United States in the manner and under the condition prescribed in this Act, and not otherwise."

Section 307(a) of the Nationality Act of 1940 (54 Stat. 1142; 8 U. S. C. 707) sets forth the general requirements for naturalization:

"No person * * * shall be naturalized unless such petitioner (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the state in which the petitioner resided at

the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) *during all the periods referred to in this subsection has been and still is a person of good moral character*, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.” (Italics added.)

Section 334(a) of the Nationality Act of 1940 requires that:

“Every final hearing upon a petition for naturalization shall be had in open court before a Judge
* * * and every final order which may be made upon such petition shall be under the hand of the court * * *.”

Hearing of petitions for naturalization by designated officers of the Immigration and Naturalization Service is provided for in Section 333(a) of the Nationality Act of 1940 (54 Stat. 1156; 8 U. S. C. 733):

“The Commissioner * * * shall designate members of the Service to conduct preliminary hearings upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such court. For such purposes any such designated examiner is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to subpoena witnesses and to administer oaths, including the oath of the petitioner to the petition for naturalization and the oath of petitioner’s witnesses.”

The filing of a preliminary form for petition for naturalization is provided for by Sec. 370.1, Title 8, Code of Federal Regulations:

“Each prospective petitioner for naturalization shall be required to fill out properly and sign preliminary application Form N-400 and submit it, * * *, to the immigration and naturalization office * * *.”

Statement of the Case.

Appellee declared her intention to become a citizen of the United States before the Clerk of the United States District Court of Los Angeles on June 16, 1942 [R. 2]. On July 12, 1944, appellee filed with the Clerk of Court her petition for naturalization [R. 5, 6]. There was filed with the Petition of appellee her declaration of intention issued June 16, 1942 [R. 2], also “Certificate of Arrival” attesting that the appellee had been admitted to the United States for lawful permanent residence [R. 4]. On April 26, 1945, there was also filed with the District Court, “Certificate of Loyalty” [R. 7] excepting appellee from the classification of alien enemy.

Motion for denial of appellee’s petition dated September 18, 1945, was filed with the District Court [R. 8]. Thereafter on September 28, 1945, there was filed with the court below a list of petitions recommended to be denied, including under Item No. 9 the name of appellee [R. 20, 21]. The petition of appellee was heard in open court on September 28, 1945 [R. 19, 32 to 66], and the recommendation of denial was disapproved by the presiding Judge who granted appellee’s petition and admitted her to citizenship of the United States [R. 22, 23, 65].

Notice of appeal was filed with the District Court on December 26, 1945 [R. 23, 24].

Summary of Facts.

Appellee is a native of Roumania, and remained a national of Roumania [R. 5], up until the time of her admission to citizenship. She has never been married [R. 47]. She was admitted to the United States for lawful permanent residence on January 16, 1921 [R. 4] and has since resided continuously in the United States [R. 5]. On June 16, 1942, the appellee declared her intention to become a citizen of the United States [R. 2]. On July 2, 1944, appellee filed with the court below, petition for naturalization [R. 5, 6, 37] under the general law requiring the establishment of her behavior as a person of good moral character for the period of five years immediately preceding the date of filing petition for naturalization and hereafter to the date of her admission to citizenship. Preliminary to filing petition for naturalization, appellee submitted to the Immigration and Naturalization Service on its Form No. 2314, entitled "Application for Certificate of Arrival and Preliminary Form for Petition for Naturalization," her application to file a petition for naturalization [R. 18a, 18b, 37, 38, 39, 40]. In answer to printed question No. 30, appearing on the said form, appellee wrote in the answer "no" [R. 18b, 37]. The question reads: "Have you ever been arrested or charged with violation of any law of the United States or state or city ordinance, or traffic regulation? If so, give full particulars."

The fact was that appellee had been arrested in Palm Springs, California, and was on February 5, 1945, convicted for resorting and for registering at a hotel under the name of Elaine Parker [R. 9, 10, 14, 15, 34, 35, 36], in violation of ordinances of the City of Palm Springs

No. 126 [R. 11, 34, 35, 36], and No. 127 [R. 16, 17, 18, 34, 35, 36].

Just prior to executing the oath to the petition before the Clerk of the United States District Court on July 12, 1944, the appellee was sworn by Naturalization Examiner Davis, and in answer to questions by the said Examiner concerning whether or not appellee had ever been arrested, the appellee replied in the negative [R. 39]. The appellee admitted in her testimony before the United States District Court that she knew the answer she had given to Naturalization Examiner Davis to the effect that she had never been arrested was false [R. 40, 46]. When Appellee appeared before the clerk to execute her petition for naturalization, she swore to the truthfulness of the allegations contained therein, in the presence of her two witnesses [R. 4, 5, 40]. Immediately thereafter, appellee and her two witnesses appeared before designated Naturalization Examiner Parker. Miss Parker thereupon swore the appellee and her witnesses and in the presence of her witnesses appellee was questioned by Miss Parker, *inter alia*, as to whether her statement relative to never having been arrested was true and appellee again reaffirmed the truthfulness of her prior negative answer [R. 40, 42]. In the presence of the appellee, Miss Parker then questioned appellee's two witnesses as to whether or not appellee had, to their knowledge, ever been arrested and they also testified in the negative [R. 61].

Appellee did not thereafter reveal the fact of her arrest and convictions until sometime subsequent to the date of filing her petition for naturalization, and then, only when she was interviewed by an officer of the Immigration and Naturalization Service and confronted with copies of the

record evidence relating to her arrest and convictions in Palm Springs, California [R. 33, 38].

At the hearing before the United States District Court on appellee's petition for naturalization there was accepted in evidence certified copy of complaint, judgment, and order of the Judge of the City Court of Palm Springs, California [R. 9, 10, 14, 15, 34, 36, 66]. The complaint charged appellee with violation of ordinances of the City of Palm Springs, Nos. 126 and 127 [R. 9, 14, 15, 34, 35, 36]. These ordinances in substance make it a crime to register at a hotel in a name other than the true name of the person registering and prohibiting resorting to a hotel *et cetera*, in the City of Palm Springs with a person not the spouse of the person resorting for the purpose of sexual intercourse or for other immoral purposes [R. 11, 16.] The appellee pleaded guilty to the charge of registering under a name other than her true name and pleaded not guilty to the charge of resorting. She waived right to trial by jury and was found guilty by the City Judge of the charge of having resorted as well as having registered her name as Elaine Parker on the hotel register [R. 9, 10].

Questions at Issue.

Did the court err in finding that appellee during the five years immediately preceding the filing of her petition for naturalization had conducted herself as a person of good moral character as required by Section 307(a) of the Nationality Act of 1940 (8 U. S. C. 707(a))?

Did the court err in finding that the concealment by appellee of her arrest and convictions of crimes within the statutory period did not constitute bad moral character within the meaning of the law?

ARGUMENT.

It is our contention first that by reason of appellee's acts leading to arrest and convictions during the statutory period commencing July 12, 1939 [R. 33], and running to the time of appellee's admission to citizenship, she has failed to conduct herself as a "person of good moral character" within the meaning of that term as used in Section 307(a) of the Nationality Act of 1940 (8 U. S. C. 707(a)).

Secondly, that the appellee's deliberate concealment of her criminal record by means of false statements in the naturalization proceeding, is conduct which demonstrates a total failure to meet the burden of establishing that appellee was a morally fit candidate for receiving a grant of the high privilege of United States citizenship.

Required Proof of Good Behavior During the Prescribed Probationary Period of Residence.

Ever since the year 1795 Congress has required proof of good behavior during the probationary period of residence as a condition precedent to the granting of citizenship.¹ It is one of the three main basic tests prescribed, the other two, being proof of attachment to the principles of the Constitution and that the applicant is well disposed towards the good order and happiness of the United States.²

¹Act of Jan. 29, 1795 (1 Stat. 414). See, also, Act of Mar. 26, 1790 (1 Stat. 103, 104).

²Sec. 307(a), Nationality Act of 1940 (8 U. S. C. 707(a)).

An applicant's behavior during the statutory period is significant insofar as it supplies an index to his character.³ However, behavior alone is not necessarily decisive, and the applicant for naturalization must establish the fact of his good moral character during the prescribed period.⁴ The applicant has the burden of establishing that he has behaved as a person of good moral character.⁵ The applicant may only be granted citizenship in the manner and under the conditions prescribed by Congress, and not otherwise.⁶ Any doubt regarding the qualifications of an applicant for citizenship must be resolved in the Government's favor.⁷

On a plea of not guilty [R. 9, 14, 34, 35, 36] appellee was convicted [R. 10] of the charge of having resorted to a hotel room with a person to whom she was not married for the purpose of having sexual intercourse, and for other immoral purposes. The resorting occurred on January 31, 1943. She pleaded guilty to a charge of having registered at the same hotel on January 26, 1943, under the name of Elaine Parker [R. 14, 15]. The appellee states the resorting charge was false [R. 35]. The judgment of conviction is conclusive as against the unsup-

³*In re Nosen*, 49 F. (2d) 817.

⁴*U. S. v. Sherman*, 40 F. Supp. 478.

⁵*In re Vasicek*, 271 Fed. 326; *Maney v. U. S.*, 49 S. Ct. 15, 278 U. S. 17, 73 L. Ed. 156.

⁶Sec. 301(d), Nationality Act of 1940 (8 U. S. C. 701(d)); *U. S. v. Ginsberg*, 37 S. Ct. 422, 243 U. S. 472, 61 L. Ed. 853.

⁷*U. S. v. Manzi*, 48 S. Ct. 328, 276 U. S. 463, 72 L. Ed. 654; *In re Nybo*, 42 F. (2d) 727; *Petition of Oganessoff*, 20 F. (2d) 778.

ported denial of appellee.⁸ These convictions of the Palm Springs City Ordinances [R. 11, 12, 16, 17], stand as a legislative indictment that appellee's conduct was regarded as offensive to the generally accepted moral standards of the community. While it is true that the offense is designated as a misdemeanor and the prescribed punishment is light, the appellee's acts violated ordinances directly aimed at maintaining the moral standard of the community.

The courts have denied naturalization on the grounds that the petitioner had not established behavior as a person of good moral character during the probationary period within the meaning of the naturalization law in the following circumstances.

The Second Circuit Court of Appeals on the basis of insufficient showing of good moral character, reversed the order of the District Court admitting to citizenship an alien who was guilty of one act of adultery during the probationary period.⁹

An alien who neglected to support his infant children in Norway after he came to the United States was denied citizenship on the grounds that he had not established the required moral behavior.¹⁰

Citizenship was denied to an alien as not of good moral character where he with another alien approached the chambers of the court in which his petition for naturalization was pending and attempted to pass two five-dollar

⁸*U. S. v. Clifford*, 89 F. (2d) 184.

⁹*Estrin v. United States*, 80 F. (2d) 105.

¹⁰*In re Nosen, supra*, note 3.

bills to the judge's secretary with the promise of further reward in the event of his admission to citizenship.¹¹

Naturalization was denied on the ground of failure to establish the required good moral character where the court in a divorce action granted alien's wife a divorce on the ground of "cruel and barbarous treatment." The court measured the behavior of the alien within the meaning of the naturalization statute by the moral standard of the average citizen in the community and concluded that "the average citizen, whether he be husband or wife, is not guilty of cruel and barbarous treatment of the other spouse."¹²

False Statements in Naturalization Proceedings.

The arrest and conviction of appellee occurred in a county other than where the petition for naturalization was filed and in a city a considerable distance from Los Angeles where her petition was filed and where it might well have been assumed unlikely that any neighborhood investigation would be conducted by the Immigration and Naturalization Service. The denial and concealment was knowingly and deliberately made [R. 20, 38, 39, 40, 41, 42, 61] and it was not until sometime after the filing of the petition for naturalization when confronted with the record of her conviction, that appellee admitted the true facts [R. 33, 38].

False statements in the naturalization proceeding have long ago come to the attention of the Courts and Congress.

¹¹*Petition of Oganesoff, supra*, note 7.

¹²*Application of Polivka*, 30 F. Supp. 67.

In a suit brought to cancel citizenship on the grounds of fraud decided by the United States Supreme Court on June 10, 1946,¹³ the Court stressed the point that:

“* * * Congress has provided that fraud is a basis for cancellation of a certificate of naturalization
* * * The legislative history of that enactment shows that false swearing was one of the evils included in the statutory grounds for denaturalization.
* * * A certificate obtained by fraud is clearly within the reach of Congressional power. * * *
To hold otherwise would be an anomaly. It would in effect mean that where a person through concealment, misrepresentation or deceit perpetrated by a fraud on the naturalization court, the United States would be remediless to correct the wrong. That would indeed put a premium on the successful perpetration of frauds against the nation * * * We adhere to the prior rulings of this Court that Congress may provide for the cancellation of certificates of naturalization on the grounds of fraud in their procurement and thus protect the courts and the nation against practices of aliens who by deceitful methods obtained the cherished status of citizenship * * *.”

It is of transcendent importance that the alien petitioner for naturalization at least make a full and frank disclosure concerning all matters about which inquiry is made of him concerning his qualifications during the naturalization proceeding. An alien who deliberately makes false statements in his proceeding for naturalization is deficient in the good moral character that is requi-

¹³*Knauer v. United States*, 66 S. Ct. 1304, at pp. 1313, 1314, 1315. See, also, *United States v. Ness*, 38 S. Ct. 118, 120, 245 U. S. 319, 324, 62 L. Ed. 321.

site to the granting of naturalization.¹⁴ This may be so even when revelation of the true facts would not in itself have been sufficient to bar naturalization.¹⁵

The Courts have denied naturalization petitions because of false statements in the naturalization proceedings in the following situations:

False statements concerning absences from the United States of the petitioner for naturalization.¹⁶ False statements in the naturalization proceeding concerning the true allegiance of the alien.¹⁷ False statements in the naturalization proceeding as to date of birth,¹⁸ marital status,¹⁹ name,²⁰ and residence.²¹ Fourteen years after false statements were made in the naturalization proceeding concealing criminal records, citizenship was revoked by the Court.²² Citizenship was revoked where during the naturalization hearing the Court asked whether there was proof of conviction of the "sale of intoxicating liquor."

¹⁴*In re Talarico*, 197 Fed. 1019; *U. S. v. Chiaravalle*, 45 F. Supp. 509; *U. S. v. Mira*, 41 F. Supp. 224.

¹⁵*U. S. v. Etheridge*, 41 F. (2d) 762; *U. S. v. Goldstein*, 30 F. Supp. 771; *U. S. v. Marcus*, 1 F. Supp. 29; *U. S. v. Albertini*, 206 Fed. 133.

¹⁶*U. S. v. Mira*, *supra*, note 14.

¹⁷*U. S. v. Chiaravalle*, *supra*, note 14.

¹⁸*U. S. v. Goldstein*, *supra*, note 15.

¹⁹*U. S. v. Mira*, *supra*, note 14; *U. S. v. Rutman*, 27 F. Supp. 891; *U. S. v. Marcus*, *supra*, note 15; *U. S. v. Albertini*, 206 Fed. 133, and *In re Zycholc*, 43 F. (2d) 438.

²⁰*U. S. v. Goldstein*, *supra*, note 15, and *In re Zycholc*, *supra*, note 19.

²¹*U. S. v. Rutman*, *supra*, note 19.

²²*U. S. v. Brass*, 37 F. Supp. 698.

The alien was the only one present that knew that he had been convicted on a charge of "sale of intoxicating liquor." He stood mute. The Court pointed out that where a party conceals a fact that is material to a transaction, knowing that the other party is acting on the assumption that no such fact exists, the concealment may be as much a fraud as if the existence of the fact were expressly denied, or the reverse of it expressly stated.²³ Citizenship was revoked where the alien during the naturalization proceeding admitted he had been arrested for a traffic violation, but concealed conviction of criminal charges occurring considerably prior to the beginning of the five-year probationary period immediately preceding the date of filing petition for naturalization. The Court stating that it is incumbent on the alien when requested, to honestly and truthfully disclose the facts bearing on his moral conduct during and before the five-year period, in order that the court may determine whether, taking into account his whole conduct, he has in fact been a man of good moral character during the five-year period.²⁴ The Third Circuit Court of Appeals reversed the District Court in an action instituted in the lower court to cancel citizenship where the alien-applicant had denied under oath before a Naturalization Examiner that he had ever been arrested and wilfully and knowingly concealed from such government representative his criminal record. The lower court

²³*U. S. v. De Francis*, 50 F. (2d) 497.

²⁴*U. S. v. Etheridge*, *supra*, note 15.

had held that the legal justification for an order of revocation must be based upon a fraud upon the court. The Circuit Court took the view that the examination before the Naturalization Examiner was but one step in ascertaining whether the alien was a fit candidate for citizenship. The Court further pointed out that naturalization is one of the highest gifts which can be conferred by the United States, and that for this reason the alien must deal with the utmost good faith toward the government.²⁵ Naturalization was revoked on the grounds of a failure to establish the requisite, good moral character, where the alien-applicant had been a resident of the United States for forty-one years and had denied that he had been asked the question concerning any arrests.²⁶ In another case the Court held that where the original petition for naturalization had been denied because of false statements concealing arrests made to the Chief Naturalization Examiner who was "charged with the duty of examining applicants for naturalization under oath, preparatory to their appearance in court for a hearing upon their petitions," that on the filing of a subsequent petition prior to the expiration of five years from the date of concealing his arrests by false statements to the Examiner, the prior denial was *res adjudicata* of the matters made the ground of refusal to grant the original petition.²⁷

²⁵*U. S. v. Saracino*, 43 F. (2d) 76.

²⁶*U. S. v. Mancini*, 29 F. Supp. 44.

²⁷*In re Talamico*, 197 Fed. 1019.

Conclusion.

The conduct of the appellee at Palm Springs during the probationary period for naturalization did not measure up to the standards of morality of that community or the community in which she resided during the five years immediately preceding the date of filing her petition for naturalization.

The deliberate concealment of her arrest and convictions in the naturalization proceeding demonstrated a lack of the moral fitness required to be established under the naturalization law precedent to the grant of the high privilege of United States citizenship. On the basis of sound public policy citizenship should not be granted in such circumstances. To hold otherwise would put a premium on the successful perpetration of frauds against the government in naturalization proceedings.

Respectfully submitted,

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IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director, Immigration and
Naturalization Service, United States Department of
Justice, District No. 16,

*Appellant,**vs.*

ESTHER PUPKO,

Appellee.

APPELLANT'S REPLY BRIEF.

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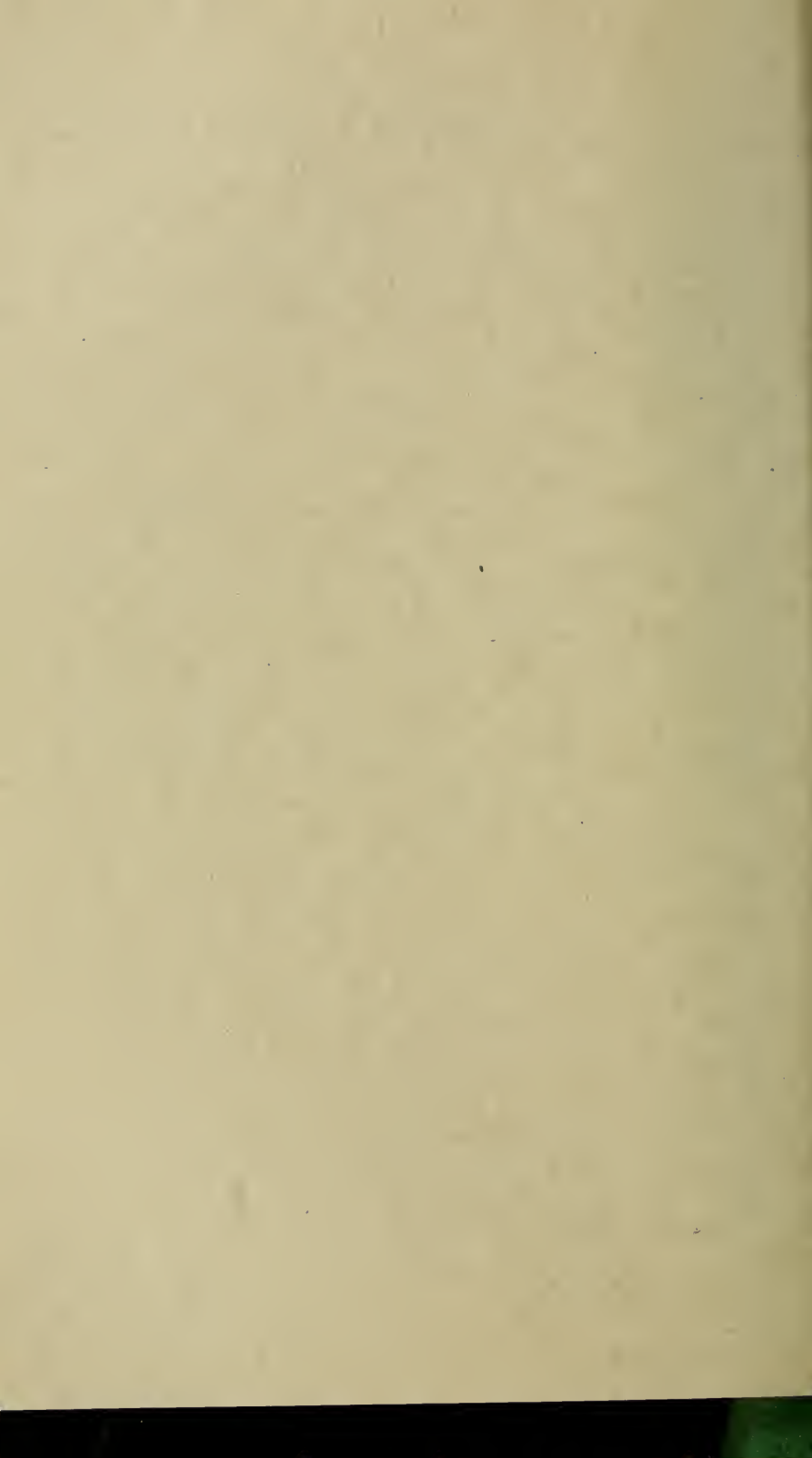
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TOPICAL INDEX

	PAGE
Criminal conviction	1
False statements in the naturalization proceeding.....	3

TABLE OF AUTHORITIES CITED

CASES	PAGE
Anderson v. Federal Cartridge Corp., 156 F. (2d) 681.....	7
Harris Brothers, In re, 5 F. Supp. 191.....	2
Ledo, Petition of, 67 F. Supp. 917.....	7
Polidka, Application of, 30 F. Supp. 67.....	7
United States v. Clifford, 89 F. (2d) 184.....	3
United States v. Corsi, 63 F. (2d) 757.....	3
United States v. Ginsberg, 37 S. Ct. 422, 243 U. S. 472, 61 L. Ed. 853	6
United States v. Mazzoni, 43 F. Supp. 56.....	6
United States v. Saracino, 43 F. (2d) 76.....	7
United States v. Zgrebec, 38 F. Supp. 127.....	6
United States ex rel. Mylius v. Uhl, 203 Fed. 152; affirmed 210 Fed. 860	3
Wall v. Hudspeth, 108 F. (2d) 865.....	2

STATUTES

Code of Federal Regulations, Title 8, Sec. 361.3.....	4
Code of Federal Regulations, Title 8, Sec. 270.1 and 8.....	4
Code of Federal Regulations, Title 8, Sec. 370.8.....	5
Code of Federal Regulations, Title 8, Sec. 373.1(a).....	6
Nationality Act of 1940, Sec. 327(a), (d), (8 U. S. C., Sec. 327(a), (d))	4
Nationality Act of 1940, Sec. 333(a), (8 U. S. C., Sec. 733).....	6
Nationality Act of 1940, Sec. 346(a)(1), (8 U. S. C., Sec. 746 (a)(1))	4



No. 11284

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director, Immigration and
Naturalization Service, United States Department of
Justice, District No. 16,

Appellant,

vs.

ESTHER PUPKO,

Appellee.

APPELLANTS' REPLY BRIEF.

Criminal Conviction.

Counsel for Appellee concludes that the trial judge believed the explanations of Appellee and disbelieved the record evidence of her conviction of having resorted to a room with a person to whom she was not married for the "purpose of having sexual intercourse, and for other immoral purposes" as charged in the criminal complaint. Appellee's counsel states "there was no evidence presented to the court or any proof of any immoral acts actually carried on. The forbidden ordinance made it [an] offense to even go to a room or be in a room, apparently, with a man for the purpose of having sex relations * * *. In this respect, the trial judge by his ultimate decision found in her favor" (App. Br. pp. 9,10). Such conclusion

is not sustained by the transcript of the naturalization proceeding before the District Court. A close reading of the Transcript of Record leads to the opposite view. When Appellee attempted to tell the trial judge about other girls who apparently had been contacted by the Palm Springs officers, the Court commented, "Policemen don't go around framing people" [R. 59]. The Court inquired of the Government Representative, "What were the other immoral purposes? I mean, do you have any record of it?" [R. 45.] The Court elicited from Appellee that two police officers testified as witnesses against Appellee before the City Judge [R. 57]. Finally the Court concluded: "There is no record that she was a professional prostitute or even a loose woman, *other than this one incident* * * *" (italics added) [R. 63]. Prior to making this comment the Court had heard the testimony of Appellee that she had come to California alone [R. 48]; that she had been employed for about six months at the Roseland Dance Hall as a taxi dancer licensed by the City of Los Angeles [R. 43]; that she had worked at various places as a waitress [R. 43] and as a cashier at the Sunset Bowling Alley [R. 49], and that at the time of her appearance before the District Court she was employed as a photographer in a night club on Vine Street, and that her mother had only recently come to Los Angeles [R. 50]. Competent evidence of the conviction and proceedings before the Palm Springs City Judge was before the District Court [R. 9-18, 34-36]. The City Judge and police officers are presumed to have performed their official duties in a regular and lawful manner.¹ It cannot be assumed from the

¹*In re Harris Brothers*, 5 F. Supp. 191, 192; *Wall v. Hudspeth*, 108 F. (2d) 865, 867.

mere fact of granting the petition for naturalization that the District Court Judge believed Appellee not guilty as charged and convicted.

Appellee's counsel reasons that the case of *United States v. Clifford*, 89 F. (2d) 184, cited by the government, does not support the conclusion that the judgment of conviction is conclusive as against the unsupported denial of the Appellee (App. Br. p. 5). At page 185 of that case the Court in commenting on the alien's conviction of conspiracy states: "Such a crime involves an unlawful intent which the judgment of conviction established beyond any contradiction sought to be proved by the affidavit." The Second Circuit Court of Appeals denied a petition for rehearing in a writ of habeas corpus proceeding involving an alien under deportation, and in considering the question of whether the immigration authorities or the Court might go behind the record of conviction to determine whether or not the crime involved moral turpitude stated: "The evidence upon which verdict was rendered may not be considered, nor may the guilt of the defendant be contradicted."²

False Statements in the Naturalization Proceeding.

With respect to the various statements of Appellee in the naturalization proceeding, concealing her arrest and convictions, counsel would excuse them as "white lies" (App. Br. p. 12). Significantly, the attitude of Congress toward false statements in the naturalization proceeding

²*U. S. v. Corsi* (2d Cir.), 63 F. (2d) 757, 758. See also *U. S. ex rel. Mylius v. Uhl*, 203 Fed. 152, 154, affirmed 210 Fed. 860 (C. C. A. 2, 1913).

is expressed in the following criminal provision which is a part of the Nationality Act of 1940:³

“(a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—

“(1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.”

There is no conflict in the evidence relating to the falsity of the statements made by Appellee in the naturalization proceeding, both orally and in writing, and that they were made knowingly and intentionally. Appellee testified that she wrote in the answer “no” to question No. 30 appearing on Naturalization and Immigration Service Form N-400, reading: “Have you ever been arrested or charged with violation of any law of the United States or any city ordinance or traffic regulation? If so, give full particulars.” Form N-400 is an official form prescribed by law [R. 18b, 37, 38].⁴ It is provided by regulation that:⁵

“Section 370.1. Each prospective petitioner for naturalization shall be required to fill out properly and sign preliminary application Form N-400 and submit

³Sec. 346 (a) (1), Nationality Act of 1940 (8 U. S. C. 746 (a) (1)).

⁴Sec. 327 (a) and (d), Nationality Act of 1940 (8 U. S. C. 327 (a) and (d)), and Title 8, Code of Federal Regulations, Sec. 361.3.

⁵Sec. 370.1 and 8, Title 8, Code of Federal Regulations.

it, * * * to the immigration and naturalization office * * *.”

“370.8. Wherever practicable, preliminary examination of applicants for naturalization and their witnesses shall be made in person and under oath. The applicant and each witness shall be interviewed separately and apart from one another. The purpose of such examinations shall be to obtain accurate and material information bearing upon the applicant’s admissibility to citizenship * * *. *If the applicant has been arrested or charged with the violation of any law or ordinance, the facts shall be ascertained, including information as to whether conviction resulted and the nature and extent of any sentence which may have been imposed.* * * *” (Italics ours.)

Appellee testified before the District Court that she had been examined separate from her witnesses at a preliminary examination by Examiner Davis [R. 39, 40], and that on the same date she appeared before designated Examiner Miss Parker [R. 40, 41, 60-62]. The Appellee swore before Miss Parker on that occasion that her statements before preliminary Examiner Davis were true. Appellee further swore to tell the truth when testifying before Miss Parker. Appellee couldn’t remember whether Miss Parker had asked her the specific question as to whether or not she had been arrested, but did testify: “I do remember her asking me if I answered the questions honestly, and I swore to it, and that one question I had not answered correctly” [R. 42]. Miss Parker testified [R. 60, 61] that she swore the Appellee to tell the truth, and that she asked the Appellee if she had been arrested and that Appellee answered “No.”

The appearance before the designated examiner is provided for by law and regulation.⁶ The regulation authorizes in part:

“Sec. 373.1 (a). Preliminary hearings shall be conducted in person by the designated examiner . . . and the petitioner and his witnesses shall be present. The petitioner and witnesses shall first be duly sworn. The designated examiner shall have before him at the preliminary hearing the record of the preliminary examination in each case. He shall not, however, be limited to the information contained in such record, but may use any material evidence or data received from any other source; and he may present and examine other witnesses than those produced by the petitioner.”

The argument is untenable that such statements can be overlooked as “white lies” in the face of the naturalization regulations specifically requiring disclosure of any arrests or convictions and the expressed attitude of Congress in the same Nationality Act, making an intentional failure to disclose such matters a crime. Appellee has not met the burden demanded by law as a condition precedent to the granting of citizenship, for “an alien who seeks political rights as a member of this nation can rightfully obtain them only upon terms and conditions specified by Congress.”⁷ False statements before the naturalization ex-

⁶Sec. 333 (a), Nationality Act of 1940 (8 U. S. C. 733), and regulations thereunder set forth in Sec. 373.1 (a), Title 8, Code of Federal Regulations.

⁷*U. S. v. Ginsberg*, 37 S. Ct. 422, 425, 243 U. S. 472, 474, 61 L. Ed. 853. See also *U. S. v. Mazzoni*, 43 F. Supp. 56 and *U. S. v. Zgrebec*, 38 F. Supp. 127.

aminers is properly a grounds for the denial of naturalization.⁸

The basis for determining the required moral standard under the naturalization laws is measured by the moral standard of the average citizen in the community and not by any particular group of individuals in a community⁹ as implied in the statement of counsel for Appellee reading:

“No doubt the Judge might have well reflected that biblical statement ‘He who is without sin among you, let him cast the first stone,’ and he might well have inquired whether there was any such among the immigration officers who were pressing the proceeding.”
(App. Br. p. 11.)

The personal reference in this respect to the immigration officers has no proper place in an appellate brief.¹⁰

Respectfully submitted,

JAMES M. CARTER,
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RONALD WALKER,
CLYDE C. DOWNING,
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BRUCE G. BARBER,
*Chief, Adjudications Division,
Immigration and Naturalization Service,
on the Brief.*

⁸*Pet. of Ledo*, 67 F. Supp. 917, decided Sept. 12, 1946. See also *U. S. v. Saracino*, 43 F. (2d) 76.

⁹*Application of Polidka*, 30 F. Supp. 67.

¹⁰*Anderson v. Federal Cartridge Corp.*, 156 F. (2d) 681, 686.



United States
Circuit Court of Appeals

For the Ninth Circuit.

JOSEPHINE GONZALEZ,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JAN 24 1947

PAUL P. O'BRIEN,
CLERK



United States
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Appeal:

Notice of	14
Points Relied Upon on	306
Certificate of Clerk, D.C.	16
Judgment and Commitment and Probationary Order	12
Indictment	2
Motion for Leave to Amend Designation of Points to be Relied Upon	307
Names and Addresses of Attorneys	1
Notice of Appeal	14
Notice of Intent to Make Motion to Suppress Evidence	7
Order Permitting Filing on Reporter's Tran- script	304
Points Relied Upon on Appeal	306
Reporter's Transcript of Proceedings	283
Stipulation for Filing Reporter's Transcript of Proceedings in Lieu of Bill of Exceptions ..	305
Transcript of Proceedings	18
Verdict	11

	INDEX	PAGE
Witnesses for Defendant:		
Callardo, Carmen		
—direct	217
—cross	219
—redirect	220
—recross	220
Gonzalez, Alfonso		
—direct	164
—cross	171
—redirect	207
Gonzalez, Josephine		
—direct	224
—cross	239, 252
—redirect	271
—recross	272
Macias, Helen		
—direct	208
—cross	212
—redirect	213
—recross	213
Sanford, Frank J.		
—direct	151
—cross	154
—redirect	160, 162
—recross	161
Santana, Jesus		
—direct	121, 280
—cross	137, 281
—redirect	150

INDEX

PAGE

Witnesses for Defendant—(Continued):

Santa, Maria Del Refugio

—direct	115
—cross	119
—redirect	120

Witnesses for Plaintiff:

Beckner, A. V.

—direct	19
—cross	58

Mallory, G. E.

—direct	75
—cross	77

Pena, Rudolph S.

—direct	78
—cross	83

Polcuch, Oscar W.

—direct	97, 275
—cross	103

Reid, William T.

—direct	43
—cross	46

Russell, David A.

—direct	95
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* Page numbering appearing at foot of page of original certified Transcript of Record.

United States District Court
Southern District of California
Central Division

No. 18244

September, 1945, Term

THE UNITED STATES OF AMERICA

vs.

JOSEPHINE GONZALEZ and
JESUS SANTANA

No. 18244. Viol.: United States Code, Title 21, Section 174, Possession of narcotics; United States Code, Title 26, Section 2553(a), Purchase of narcotics; United States Code, Title 18, Section 88, Conspiracy.

INDICTMENT

In The Name And By The Authority Of The United States of America, the Grand Jury for the Southern District of California, at Los Angeles, presents on oath in open court:

That Josephine Gonzalez and Jesus Santana, hereinafter called the defendants, heretofore, to-wit: On or about October 9, 1945, in Los Angeles County, California, within the Central Division of the Southern District of California, did wilfully, unlawfully, and feloniously receive, conceal, and facilitate the transportation and concealment after importation of a certain narcotic drug, to-wit: approximately 119 ounces of smoking opium, which

said smoking opium, as the defendants well knew, had been imported into the United States of America contrary to law;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [2]

COUNT TWO

And the grand jury aforesaid, upon its oath aforesaid, does further present:

That Josephine Gonzalez and Jesus Santana, hereinafter called the defendants, heretofore, to-wit: On or about October 9, 1945, in Los Angeles County, California, within the Central Division of the Southern District of California, did knowingly, wilfully and unlawfully, and feloniously purchase and distribute a certain narcotic drug mentioned in United States Code, Title 26, Section 2550(a), to-wit: approximately 119 ounces of smoking opium, which said smoking opium was not then and there in or from the original stamped package containing said smoking opium;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [3]

COUNT THREE

And the grand jury aforesaid, upon its oath aforesaid, does further present:

That Josephine Gonzalez and Jesus Santana, hereinafter called the defendants, heretofore, to-

wit: Prior to the date of the commission of the overt acts hereinafter set forth and continuously thereafter to and including October 11, 1945, in the County of Los Angeles, State of California, within the Central Division of the Southern District of California, did knowingly, wilfully, unlawfully, corruptly, and feloniously conspire, combine, confederate, arrange, and agree together and with each other and with divers other persons, whose names are to the grand jury unknown, to commit offenses against the United States of America and the laws thereof, to-wit:

(1) Wilfully, unlawfully, and feloniously to receive, conceal, and facilitate the transportation and concealment after importation of a certain narcotic drug, to-wit: approximately 119 ounces of smoking opium, which said smoking opium, as the defendants then and there well knew, had been imported into the United States of America contrary to law;

(2) Knowingly, wilfully, unlawfully, and feloniously to purchase, sell, dispense, and distribute a certain narcotic drug, to-wit: approximately 119 ounces of smoking opium, which said smoking opium was not then and there in or from the original stamped package containing said smoking opium;

That after the formation and in furtherance of said conspiracy and to effect the objects and purposes thereof the defendants did commit various overt acts, among which were the following:

(1) On or about October 9, 1945, defendant

Josephine Gonzalez went to the Model Auto Court, located at 2631 Garvey Boulevard, Alhambra, California;

(2) On or about October 9, 1945, defendant Josephine Gonzalez at approximately 9:00 p.m., drove from Alhambra, California, to La Canada, California; [4]

(3) On or about October 9, 1945, in Los Angeles County, California, defendant Josephine Gonzalez concealed sixteen five-*tael* brass cans containing approximately 112 ounces of smoking opium in a suitcase;

(4) In the late evening of October 9, 1945, or the early morning of October 10, 1945, defendant Jesus Santana drove to the Model Auto Court, located at 2631 Garvey Boulevard, Alhambra, California;

(5) On or about October 9, 1945, in Los Angeles County, California, defendant Jesus Santana concealed a five-*tael* can of smoking opium near the glove compartment of a Dodge automobile;

(6) On or about October 9, 1945, defendant Jesus Santana spent the evening in an auto trailer, located at the Model Auto Court, 2631 Garvey Boulevard, Alhambra, California;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

/s/ CHARLES H. CARR,

United States Attorney.

[Endorsed]: Filed Jan. 9, 1946. [5]

upon her arrest the aforesaid officers opened her suitcase and searched it without showing her a search-warrant; that further upon information and belief she alleges that the officers had no search-warrant at the time nor had they obtained one previously; that she made [9] no objection to the search because she feared the officers, and thought such objection would be useless; that such search without a warrant is in violation of her rights under the fourth and fifth amendments to the constitution of the United States of America.

/s/ JOSEPHINE GONZALEZ.

Subscribed and sworn to before me this 16th day of February, 1946.

[Seal] /s/ N. A. MARSH,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires July 2, 1949. [10]

POINTS AND AUTHORITIES

“Evidence illegally obtained by search of premises without a warrant can not be used to support a claim of probable cause for belief that the offense was being committed in the presence of officers justifying them in making the arrest without a warrant, and in searching premises without a warrant, as incident to contemporaneous lawful arrest.”—U. S. v. Lee (1936), 83 Fed. (2d) 195.

“Evidence illegally obtained cannot be used to support the claim of probable cause.”—Wakkuri v. U. S., 67 Fed. (2d) 844, CCA 6.

“Belief, however well founded, that an article

sought is concealed in a dwelling house (and this would apply as well to any article of personal property) furnishes no justification for a search of that place without a warrant. And such searches are held unlawfully made notwithstanding facts unquestionably showing probable cause.”—*Agnello v. U. S.* 269 U. S. 20, 46 Sup. Ct. 4, 70 L. Ed. 145, 51 A.L.R. 409.

“Belief that an article sought is concealed in a dwelling does not justify search without a warrant, notwithstanding facts unquestionably show probable cause.”

“The presumption under which possession of narcotic drug authorizes [11] conviction of unlawful importation of drug . . . cannot aid officers in believing that the crime was being committed in their presence as the basis for arrest and search without a warrant.”—*U. S. v. Tom Yu*, 1 Fed. Supp. 357.

“The Constitutional provisions for the security of person and property are to be liberally construed, and it is the duty of the courts to be watchful for the Constitutional rights of the citizen, and against any stealthy encroachments thereon.”—*Boyd v. U. S.*, 116 U. S. 616. See *Gouled v. U. S.*, 255 U. S. 305.

In *Carrol v. U. S.*, 39 A.L.R. 807 (containing an annotated discussion of the problem), a warrant without probable cause for its issuance was held unjustified. The court said for there to be probable cause for its issuance, there must be a reasonable

ground to believe the party guilty, without the evidence sought to be obtained through the search.

It boils down to this: If the officers had probable cause for arrest without any reference to the results of the search without a warrant, the results might be admitted to evidence, but if the evidence furnishes any part of the probable cause for arrest, then the search is clearly illegal, even as an incident to arrest, and the authorities hold that such evidence can never be admitted. It seems clear here that the 16 cans of alleged opium found in the suitcase formed a part of the probable cause for arrest of the defendant Josephine Gonzalez; therefore it is improper to use that evidence in any way.

[Endorsed]: Filed Feb. 16, 1946. [12]

At a stated term, to-wit: The February Term, A.D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 19th day of February in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause coming on for hearing on motion of defendant Gonzalez to suppress evidence, filed February 16, 1946; and for trial of the defendants

Josephine Gonzalez and Jesus Santana; Walter S. Binns, Esq., Assistant U. S. Attorney, appearing for the Government; Gladys T. Root appearing for the defendant Gonzalez; J. B. Mandel, Esq., appearing for the defendant Santana; the said defendants being present in custody:

Attorney Root presents said motion to suppress, etc. The Court makes a statement and orders said motion to suppress denied, with exception to the defendant Gonzalez.

It is ordered that this cause be, and it hereby is, continued to February 20, 1946, at 9:30 a.m., for trial of both defendants, and the witnesses are admonished to return at that time. [14]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Josephine Gonzalez

Guilty as charged in count one of the Indictment, and

Guilty as charged in count two of the Indictment; and

We, the Jury in the above-entitled cause, find the defendant, Jesus Santana

Guilty as charged in count one of the Indictment, and

Guilty as charged in count two of the Indictment.

Dated: Los Angeles, California, February 21, 1946.

/s/ NOBLE M. DAWSON,
Foreman.

[Endorsed]: Filed Feb. 21, 1946. [21]

[Title of District Court and Cause.]

JUDGMENT AND COMMITMENT AND
PROBATIONARY ORDER

Criminal Indictment in three counts for violation of U.S.C., Title 21, 174; 26, 2553(a); and 18 U.S.C. 88.

On this 18th day of March, 1946, came the United States Attorney, and the defendant Josephine Gonzalez appearing in proper person, and by her attorney, Gladys T. Root; and,

The defendant having been convicted on verdict of guilty of the offenses charged in the Indictment in the above-entitled cause, to-wit: Count one: * * did wilfully, unlawfully, and feloniously receive, conceal, and facilitate the transportation and concealment after importation of approximately 119 ounces of smoking opium, etc., and Count two: * * did knowingly, wilfully, unlawfully, and feloniously purchase and distribute a certain narcotic drug, etc., to-wit: approximately 119 ounces of smoking opium, which was not then and there in or

from the original stamped package containing said smoking opium; as more fully set forth in said two counts of the Indictment; and the defendant having been now asked whether she has anything to say why judgment should not be pronounced against her, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of three (3) years in a penitentiary and pay a fine unto the United States of America in the sum of ten (\$10.00) dollars on count one; and

It Is Further Ordered that imposition of sentence on count two is suspended for the period of five years, which period is to commence at the expiration of said sentence on count one, and the defendant placed on probation for that period on the following terms and conditions: That defendant shall not violate any laws of the United States, State, County or City in which she lives during that period; that she shall report to the probation officer of this court at such times and places as he may direct, and follow such rules and regulations as he may prescribe for her conduct.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer

and that the same shall serve as the commitment herein on count one.

/s/ BEN HARRISON,

United States District Judge.

A True Copy. Certified this 18th day of March, A.D., 1940.

/s/ EDMUND L. SMITH,

Clerk.

[Endorsed]: Filed March 18, 1946. [23]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Josephine Gonzalez, Los Angeles, County Jail, Los Angeles, California.

Name and Address of Appellant's Attorney: Gladys Towles Root, 215 West Seventh Street, Suite 631 Bartlett Building, Los Angeles, California.

Offense: Two counts, violation of United States Code, Title 21, Section 174, Possession of Narcotics; United States Code, Title 26, Section 2553(a), Purchase of Narcotics.

Count I charges defendant as being in possession of a certain narcotic drug.

Count II charges defendant with purchase of a certain narcotic drug.

Date of Judgment: March 18, 1946.

Brief description of judgment or sentence:

Defendant was adjudged guilty of Count I, three years in the penitentiary; Count II, sentence suspended, five years probation.

Name of prison where now confined: Los Angeles County Jail, Los Angeles, California.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Dated: March 22, 1946.

/s/ JOSEPHINE GONZALEZ,
Appellant.

Grounds of Appeal:

1. The judgment and finding of the Trial by jury is contrary to the law and the evidence.
2. The evidence is insufficient to establish that the defendant committed the offense charged in Counts I and II of the indictment.
3. The evidence was and is insufficient to establish that the defendant committed the offense charged in Counts I and II of the indictment.
4. That there is a complete and irreconcilable variance between the evidence adduced and the charges contained in Counts I and II of the indictment, respectively.

5. That the Court committed prejudicial errors of law during the trial of the case in its rulings concerning the reception of certain evidence over Appellant's objection and to which rulings exceptions were taken.

6. That the Court misdirected the jury in points of law.

[Endorsed]: Filed March 22, 1946. [37]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 54 inclusive contain full, true and correct copies of Indictment; Minute Order Entered January 28, 1946; Notice of Intent to Make Motion to Suppress Evidence; Minute Orders Entered February 19, 1946, February 20, 1946, and February 21, 1946; Verdict; Minute Order Entered March 18, 1946; Judgment and Commitment; Defendant Gonzales' Requested Instructions; Notice of Appeal; Petition for Extension of Time to Settle Bill of Exceptions; Order Extending Time to Settle Bill of Exceptions; Stipulation and Order to File Reporter's Transcript in Lieu of Bill of Exceptions; Designation of Contents of Record on Appeal; Praecipe and Stipula-

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$15.30 which sum has been paid to me by appellant.

[Seal]

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

(Testimony of A. V. Beckner.)

Q. When you say that you saw the defendant Josephine Gonzalez, are you speaking of the lady that is sitting at the left corner of the opposite table? A. I am.

Q. Where did you first see her on that day?

A. At an auto trailer court at 2631 Garvey Boulevard in the City of Alhambra, at about 7:30 p. m. on that date.

Q. What auto trailer court?

A. The name of the place is the Model auto trailer court.

Q. Where did you see her in that auto court?

A. I saw her driving a Plymouth Sedan first on that evening, drive into the auto trailer court to park alongside of an auto trailer which had been parked there.

Q. Then what did she do? [4]

A. She got out of the auto trailer—she got out of the vehicle and entered the auto trailer.

Q. Did you observe whether or not she had anything in her hand when she went in?

A. She did not have anything.

Q. Now, then, about what time of day was this?

A. About 7:30 p. m.

Q. Did you observe her again on that day?

A. Yes. I observed her in the auto trailer at about 8:15 or 8:20.

Q. And after you observed her at about 8:15 when did you next see her?

A. At about 9 o'clock when she left the trailer.

Q. When you observed her about 8:15 what was she doing?

(Testimony of A. V. Beckner.)

A. Lying on a bed in the trailer reading a magazine.

Q. When you saw her about 9 o'clock what was she doing?

A. She left the trailer and got into this car and started driving over——

Q. Did you observe her leave the trailer and get into this car? A. I did.

Q. Did you observe her carrying anything?

A. Nothing that I could see. [5]

Q. This was evening, was it not?

A. It was.

Q. How close were you to her?

A. When she left I was approximately 100 feet or 125 feet from the auto trailer.

Q. Did you have anyone with you during this time, between 7:30 and 9 o'clock? A. Yes.

Q. Who was with you?

A. Sergeants Russell and Reid.

Q. And by whom are they employed?

A. By the Los Angeles Police Department in the Narcotic Detail.

Q. I think you testified that the defendant Josephine Gonzalez came out of the trailer and got into a gray sedan. Can you describe the car a little more particularly than that?

A. It was maroon, a Plymouth, four-door sedan, No. 1-V-9767.

Q. Now then, after you saw the defendant Gonzalez get into that car what occurred then?

A. She drove away down on to Garvey Boule-

22 Josephine Crossland - Vol. 1
(Testimony of A. V. Beckner.)

vard, and headed towards the City of Los Angeles on Ramona Boulevard, down into the Civic Center; through the Civic Center over North Spring Street, past this building to Sunset and over [6] Sunset to North Broadway. Over North Broadway to Avenue 21; north on Avenue 21 to the end of the street, which is a dead end street. She made a complete turn and came back to Baranca Street, I believe, and over to San Fernando Road. Out San Fernando Road to the intersection of Verdugo. Out Verdugo Road through Glendale, Montrose and into the city of La Canada, where she turned north on Indiana Street and proceeded about one block and made a right turn into MacArthur Street.

Q. I presume from your testimony you were following her in a car? A. Very closely, yes.

Q. Was anyone with you in the car?

A. Yes; the two men that I already mentioned.

Q. Now, what occurred at MacArthur Street in La Canada?

A. She parked the car about 200 feet into the street in front of a house.

Q. Then what occurred?

A. We went on by the place. We came back and we pulled into MacArthur Street and up to the vehicle.

Q. Then what occurred?

A. She was found in the rear seat of the car and as we drove up she started to get out onto the road.

Q. Did you approach her? A. I did. [7]

(Testimony of A. V. Beckner.)

Q. Did you have a conversation with her?

A. I did.

Q. Who was present when you had your conversation besides yourself and the defendant Gonzalez?

A. The two sergeants already mentioned.

Q. Will you tell us to the best of your ability what was said by you and what was said by the defendant Gonzalez and what, if anything, was said by the two sergeants?

A. I first asked her about the ownership of the car. She stated that it did not belong to her; that she had borrowed it from a man by the name of Santana. That in September she had had a wreck with her car and that was the reason why she was driving another man's car. She stated she had known this man for some period of time.

I asked her where he could be found and she stated that he was over at an auto trailer court at Alhambra, and that he would be found in this auto trailer there which belonged to her.

Q. Pardon me. Well, we will go back for a moment. At the time you were at this auto trailer court between 7:30 and 9, did you see the defendant Santana? A. I did not.

Q. You looked into the trailer. Did you see the defendant Santana? A. I did not. [8]

Q. Now, did you remove the owner's certificate from the maroon Plymouth Sedan in which you found Mrs. Gonzalez? A. I did.

Q. Do you have it with you? A. I do.

(Testimony of A. V. Beckner.)

Mr. Binns: Your Honor, I have here a registration card for the State of California for the year 1945. I ask that it be marked as Government's first exhibit for identification.

The Court: It will be so marked.

(The document referred to was marked as Plaintiff's Exhibit No. 1, for identification.)

Q. By Mr. Binns: Mr. Beckner, I show you Government's Exhibit No. 1 for identification. Is that the registration certificate you took from the car in which you found Mrs. Gonzalez?

A. Yes, it is.

Q. How can you identify it?

A. By the name that appears on it. "Jesus G. Santana, Postoffice Box 1174, Calexico, California" and the license number is the same that was on the vehicle.

Mr. Binns: May this be admitted in evidence at this time, your Honor?

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 1 in evidence.

(The document referred to was marked as Plaintiff's Exhibit 1, and was received in evidence.) [9]

Q. By Mr. Binns: Now then, you were telling of a conversation you had with the defendant Gonzalez there, in which she said the car belonged to Mr. Santana, and that her own car had been wrecked. Did you have any further conversation with her?

(Testimony of A. V. Beckner.)

A. Yes. She said, "You can go to the telephone right now and you can call him up and he will be there and you can verify the fact that he is the owner of the car;" and she said, "he allowed me to drive the car."

Q. Do you recall anything else at this time that was said?

A. Yes. In the back of the car I observed a gray colored suitcase and I tried the lock on it and it was locked and I asked the defendant who it belonged to and she stated it belonged to her.

Mr. Binns: May I have this gray suitcase marked as Government's next in order for identification?

The Clerk: Government's Exhibit 2 for identification.

(The suitcase referred to was marked as Plaintiff's Exhibit No. 2, for identification.)

Q. By Mr. Binns: You can observe the gray suitcase sitting here. Is that the gray suitcase you have been testifying concerning?

A. Yes, it is.

Q. Will you tell us what further occurred? [10]

A. I then asked her if she had the key for it and she reached into a handbag and she produced this leather key container, which has other keys on it, and she selected one small key which was on here, and indicated that that would be the key which would open the suitcase.

Mr. Binns: We have a key container, your Honor, containing certain keys and ask that it be

(Testimony of A. V. Beckner.)

marked Government's next in order for identification.

The Court: Why not admit it in evidence? The witness has identified it.

Mr. Binns: I offer it for admission then and I offer the suitcase.

The Court: Both may be received.

(The articles referred to were marked as Plaintiff's Exhibits Nos. 2 and 3, and were received into evidence.)

Q. By Mr. Binns: I show you this small key and ask you is that the key which you previously testified was attached to that key container?

A. That appears to be the key, yes.

Q. This rope and this ticket, were they on the key when you first saw it? A. They were not.

Mr. Binns: May we remove those, your Honor?

The Court: Why not put the key in the lock and make it all a part of the one exhibit? [11]

Mr. Binns: All right, I will offer this key as Exhibit 2-A.

The Court: They have previously been admitted separately. I simply thought you could put the key into the lock and leave it there.

Q. By Mr. Binns: After you secured the key what did you do?

A. I took the suitcase out of the car, unlocked it, opened it up, and I found a package on the inside of it.

Mrs. Root: There will be an objection to any testimony relative to the contents of the suitcase

(Testimony of A. V. Beckner.)

on the ground that there was not a search warrant or foundation shown that there was a search warrant obtained and that, therefore, the testimony is irrelevant, incompetent and immaterial.

The Court: Objection overruled and exception note.

Q. By Mr. Binns: When you opened the suitcase will you tell us what you found therein?

A. I found a bag and upon opening the bag I found a carton and that was tied with rope. I opened the carton and there were 16 metal cans in the carton.

Q. Was there anything else in the suitcase besides that carton containing the metal cans?

A. Yes. There was an object which appeared to be a woman's sun suit or something of that nature.

Q. Is that the article? [12]

A. Yes, that is it.

Q. Was there anything else in there besides the package and that woman's sun suit?

A. That is all.

Mr. Binns: Your Honor, may we call the chemist from Mr. Love's office out of order to identify this package? He is the chemist from San Francisco.

The Court: According to the opening statements by both parties there seemed to be no dispute that opium was found.

Mr. Mandel: We have no objection.

Mrs. Root: I have no objection.

(Testimony of A. V. Beckner.)

The Court: In other words, is it necessary to call a chemist?

Mr. Mandel: No, it is not as far as we are concerned. We will waive the calling of the chemist.

Mrs. Root: Perfectly all right with us.

Mr. Binns: I ask counsel to stipulate if the chemist were called to the stand he would testify that after examining the 16 cans which were sent to him, he sealed them in this parcel and that this parcel is the parcel he sealed them in.

Mr. Mandel: So stipulated.

Mr. Binns: Mrs. Root, will you so stipulate?

Mrs. Root: Defendant will so stipulate that he would so testify. [13]

Mr. Binns: May the record show the parcel is now being opened—may this be marked as Government's exhibit next in order for identification?

The Clerk: Plaintiff's Exhibit 5 for identification.

Mr. Binns: May the record show that I am now opening Government's Exhibit 5 for identification?

Q. Mr. Beckner, I call to your attention the contents of Government's Exhibit 5 and ask you if you have ever seen those cans before?

A. Yes, sir. These are the cans——

Q. Tell us how many there are?

A. There are 15 cans here.

Q. How do you know that those are the cans that you saw?

A. They bear my marking on the top of each tin.

(Testimony of A. V. Beckner.)

Q. Do they bear any other marking?

A. The date 10-9-45.

The Court: Are those the cans that you found in this suitcase?

The Witness: They are.

Mr. Binns: May these be admitted in evidence at this time, your Honor?

The Court: They may be admitted.

Mrs. Root: Object on the same ground.

The Court: Same ruling and exception noted.

(The article referred to was marked as Plaintiff's Exhibit No. 5 and was received in evidence.)

Mr. Binns: May I pass one can to the jury, your Honor?

The Court: Certainly.

Q. By Mr. Binns: Now then, Mr. Beckner, after you had found Government's Exhibit 5 was there any further conversation with the defendant Gonzalez?

A. I asked the defendant if she knew what the contents were and she stated she did not—she had never seen it before. I asked her if she did not know it was opium and she said, "No," she didn't know what opium was. I asked her if she had put it into the suitcase and she said, "No." I asked her if she locked the suitcase and she said, "No."

I asked her about the ownership of the bag again and she said, "Yes, the bag belonged to her," but she didn't know how the opium got in there. That

(Testimony of A. V. Beckner.)

was about the extent of the conversation regarding the opium at that point.

Q. Now then, what occurred?

A. I asked her what she was doing parked up there in the dark that late at night in the back seat of the vehicle and she stated she had come up there to visit her daughter who lived nearby, and upon arriving there she decided it was too late to go in and she was going to spend the night in the vehicle. That was about the extent of the conversation at that point. [15]

Q. Then what did you do?

A. We then drove back to Alhambra, to the auto trailer court at 3621 Garvey Boulevard.

Q. That is the same one you testified concerning previously? A. It is.

Q. What did you do after you got there?

A. We pulled up there and we noted that there was an automobile parked alongside of the trailer where she previously parked her car.

Q. Can you describe the second automobile?

A. Yes. That was a Dodge two-door, license No. 70C633.

Q. Now, what did you do after you arrived back at the auto trailer court?

A. Officer Reid and I took the key from the defendant Gonzalez that would fit the auto trailer and we went over and we approached it. The lights were all out. I tried the doors to the car. They were locked. Officer Reid and I then entered the

(Testimony of A. V. Beckner.)

auto trailer with the key and we found the defendant Santana in bed in his underwear.

Q. You say you used the key to open the trailer?

A. Yes.

Q. And then what occurred inside the trailer?

A. Officer Reid asked Mr. Santana his name and where [16] he lived, and the defendant Santana replied his name was Santana and he lived in Mexicala. He asked him if he owned the car that was parked outside and he said "Yes." I believe I asked him for the key for the vehicle and he indicated up in some clothing that was hanging in the trailer.

Q. Were you asking these questions in Spanish?

A. No; in English?

Q. Mexican? A. No, English.

Q. Go ahead.

The Court: Did he answer you in English?

The Witness: Mostly in Spanish, but he would indicate—for example, I asked him for the key and he indicated his coat which was hanging in the trailer. I reached for the coat pocket and I removed this key that I have here.

Q. By Mr. Binns: Was this red metal tag on the key? A. Yes, it was.

Mr. Binns: May this car key with the red metal tag attached be marked as Government's next in order for identification?

The Court: It will be admitted in evidence.

(The key referred to was marked as Plain-

(Testimony of A. V. Beckner.)

tiff's Exhibit No. 6, and was received in evidence.)

Mrs. Root: It should be admitted in evidence as I [17] understand, exclusively as against Santana. I do not believe Mrs. Gonzalez was present at any of these conversations, therefore, it would be hearsay as to her. Our objection will go to that, it is hearsay as to the defendant Gonzalez.

The Court: I think that is true, counsel.

Mr. Binns: I will bring that out.

Q. After you went back to the auto court the second time where did Mrs. Gonzalez stay?

A. She remained in the vehicle with Officer Russell while the other officer and I went on out to the trailer.

Q. After you secured the key, Government's Exhibit 6, what occurred?

A. Officer Reid asked the defendant to put some clothes on, which he did—that is, he put on some trousers, I believe, and some shoes and we stepped outside to the vehicle. I used that key and I unlocked the door, opened the door, and I started looking inside of the vehicle, under the seats in the car, in the back and so forth and then I had occasion to go up under the dashboard with my hand, over the top of the glove compartment and I found something and I pulled it out and it was wrapped in a napkin. I opened it up and it was a copper can similar to what I have here.

Mr. Binns: May I have this large brown envelope marked for identification?

(Testimony of A. V. Beckner.)

The Clerk: Plaintiff's Exhibit 7, for identification. [18]

(The envelope referred to was marked as Plaintiff's Exhibit No. 7, for identification.)

Mr. Binns: Counsel has agreed to stipulate if the chemist were to take the stand he would testify that he sealed this large brown envelope in San Francisco.

Mrs. Root: So stipulated.

Mr. Mandel: So stipulated.

Mr. Binns: May the record show I am now breaking the seal on this large brown envelope.

Q. By Mr. Binns: Mr. Beckner, I show you an object wrapped in white paper which I have removed from Government's Exhibit No. 7 for identification, and ask you if you have ever seen that object before?

A. I have, yes. It bears my marking, the date and my initials.

Q. Where did you see that before?

A. That was found in the vehicle hidden underneath, on top of the glove compartment.

The Court: Which vehicle?

The Witness: Of the Dodge found at the auto trailer park.

Q. By Mr. Binns: Calling your attention to this piece of white napkin material, have you seen that before?

A. Yes. That is the napkin which it was wrapped in. It also bears our initials and the date. [19]

(Testimony of A. V. Beckner.)

Q. Calling your attention to the bottom of——

Mr. Binns: May I offer that can in evidence at this time, your Honor?

The Court: The can and napkins will be admitted in evidence.

(The articles referred to were marked as Plaintiff's Exhibit No. 7, and were received in evidence.)

Mr. Binns: And the large brown envelope in which it was wrapped—may that also be admitted as a part of the same exhibit?

The Court: It will be included as a part of Exhibit 7.

Q. By Mr. Binns: Calling your attention to the bottom of Government's Exhibit 7, were there any distinctive markings that you noticed on the bottom?

A. Yes. It bears a number. I do not recall it at the moment. It bears the number 60, which has been scratched there with some sharp instrument.

Q. Did you put that on there?

A. I did not.

Q. Was that on there when you got it?

A. It was.

Q. Calling your attention to Government's Exhibit 5, the 15 cans, do they bear any markings on the bottom? A. Yes, they do.

Q. Can you tell the jury what markings they bear? [20] I have this can here and it indicates No. 60 on the can and No. 59 also scratched in with a sharp instrument.

(Testimony of A. V. Beckner.)

Mr. Binns: May I pass to the jury Government's Exhibit No. 7?

The Court: Yes.

Mr. Binns: And I would like to pass the same can the jury previously saw and ask them to notice the bottom of the can.

The Court: Is that the type of container that is usually used for the transportation of opium or is it an unusual can?

The Witness: I have never seen any just exactly like it in that it is brass material. It is a little smaller in size and the diameter of it is a little smaller and the can is a little taller than most cans that are commonly used.

Q. By Mr. Binns: Can you tell us now what you observed on the bottom of the cans contained in Exhibit No. 5?

A. Yes. These two cans bear the number of 59 and 60. These two bear the numbers 59 and 60 and these two bear the number 59.

Q. And does that hold true for the rest of the cans? A. Yes, sir.

Q. They bear either the number 59 or 60?

A. Yes.

Q. Now then, after you had found the cans, which is [21] Government's Exhibit No. 7, what did you do?

A. Showed it to the defendant and asked him who it belonged to. He made no reply. He was then taken back into the auto trailer to complete his dressing. I continued in a search of the vehicle and

(Testimony of A. V. Beckner.)

I discovered that the back end of the car was locked, so I walked back into the trailer and Officer Reid asked the defendant where the other key was for the back of the car, and the defendant indicated up at his trousers.

The Court: I thought he had his trousers on at that time?

The Witness: Or one part of his clothing at any rate, which he did not have on, which was hanging there—his shirt and coat, and I believe another pair of trousers up there. At any rate, Officer Reid removed this from the watch pocket, I believe, of a pair of trousers and handed it to me and then I went back outside and continued searching the vehicle and nothing further—no further narcotics were found in the car.

Mr. Binns: May this second key be marked Government's exhibit next in order?

The Court: In evidence.

The Clerk: Government's Exhibit 8.

(The key referred to was marked as Plaintiff's Exhibit No. 8, and was received in evidence.) [22]

Q. By Mr. Binns: Now then, did you have any further conversations with the defendant Gonzalez after this incident where you had found the can of opium in Mr. Santana's automobile.

A. I asked her if she knew Santana and she said "Yes."

Q. Where did this conversation take place?

A. In the auto trailer. She was seated in an-

(Testimony of A. V. Beckner.)

other vehicle at that time with another officer. She stated that she had rented the auto trailer to Santana; that she had been down to her home in Imperial Valley that day and had just gotten back on that afternoon. That if there was any opium, why, she didn't know anything about it—it must belong to Santana. And that was about the extent of the conversation at that time as I recall it.

Q. All right. After that occasion did you have any other conversations with her?

A. Yes. She came to the State office building when she was released on bond and wanted some automobile tools out of the car.

Q. Can you tell us the date of this conversation you are now describing?

A. I made no note of it.

Q. You do not remember the date?

A. (No answer.)

Mr. Mandel: This conversation with Mrs. Gonzalez was [23] out of the presence of the defendant Santana.

Mr. Binns: I will ask him that question.

Q. This conversation you tell us about—how long was it after the arrest?

A. I would say a week.

Q. And where did the conversation take place?

A. In the State office, Room 102.

Q. And who was present besides yourself and Mrs. Gonzalez?

A. She appeared at that time with a lady that

(Testimony of A. V. Beckner.)

was her sister and I believe her daughter came with her on that occasion when she arrived there.

Q. Now then, can you tell us what the conversation was on that occasion?

The Court: That conversation will only be considered as evidence against the defendant Gonzalez. It will in no way be deemed as evidence against the defendant Santana.

Q. By Mr. Binns: Will you tell us what occurred in this conversation in your office?

A. She stated she wanted some tools out of the automobile and some clothing and I believe the trailer hitch, which she had taken off the car that she had had a wreck in, so I gave her the clothing and the trailer hitch and she wanted some tools out of the car and I took her down to the vehicle, opened the back end and she identified certain tools [24] as being hers. I told her at that time that inasmuch as the vehicle belonged to another man I was not going to let her take any of the tools until the thing was straightened out. She also wanted the keys for her home down at Westmoreland, which were contained on the key ring, and I told her I would have to hold those for the time being. I had one of the officers go out and make a set of duplicate keys for her so that she could get into her trailer and also her home down in Westmoreland. She stated, "You know that that opium is not mine," and I said, "No, Mrs. Gonzalez, I don't know that to be a fact." I said, "The opium was in the car, it was in your bag, and that is all I can say about it." She says,

(Testimony of A. V. Beckner.)

"Well," she says, "it did not belong to me." She stated that she had put some tools in that car after the wrecking of her own car and that she had taken the bag and the tools and had put them into the Plymouth car on that day of the arrest.

Q. Pardon me. I think you said she had taken some tools and put them in the car. Is that what you meant to say?

A. That is what she said she had done. In other words, she thought that there were tools in that bag when she carried it out of the trailer and put it into the Plymouth.

Q. You cannot testify as to what she thought. You can only testify as to what she told you.

A. That is what she said—she was telling me this.

Q. All right. You got me confused. Can you go back [25] and tell me again what she told you on this occasion?

A. She said that the opium did not belong to her; that it was—that if it was in her bag she did not know how it got there; that she thought that there were tools, automobile tools in that bag when she took it and put it in the Plymouth car, and I pointed out the fact that the bag did not show any evidence of any dirt or any grease in the bag and I asked her why, then, if she was going up to visit her daughter would she be carrying a bag full of tools up to visit her daughter. And she said, "Well, I know it sounds funny, but that is all I can say. The opium does not belong to me."

(Testimony of A. V. Beckner.)

She returned at a later date wanting something else out of the car and——

Q. How long later was that later date?

A. Oh, it was a jack she wanted. That was several weeks after the first time—conversation.

Q. Where did she come to?

A. At the State office.

Q. Who was present besides yourself and her?

A. The office force was there. I do not recall just who was in there. I believe she came in alone on that occasion.

Q. And what was the conversation on that occasion?

A. She wanted the automobile jack, which I gave her.

Mr. Mandel: Same objection with reference to the [26] second conversation.

The Court: There is nothing incriminating about that.

Q. By Mr. Binns: Where was the jack?

A. In the Plymouth car she was driving on the night of her arrest.

Q. Was that the extent of the conversation on the third occasion?

A. She went over the same conversation stating, “You know this stuff did not belong to me” and all that sort of thing, and I told her I didn’t know any such thing to be a fact. That was about the extent of the conversation then.

The Court: Those conversations will be limited to the defendant Gonzalez and the jury is instructed

(Testimony of A. V. Beckner.)

to not consider them as any evidence against the defendant Santana.

We will take our morning recess at this time. Ladies and gentlemen, we are going to take a recess for a few moments and the court desires to admonish you not to discuss this case among yourselves or permit any person to discuss it with you, or to express or form any opinion until the case is finally submitted to you. During your term as jurors, you will hear that admonition given to you many times and you may think it is a mere formality, but it is not. The court wants you to bear in mind that the court is interested in having your minds free and open and uncontaminated by outside influences. Will counsel stipulate that [27] that admonition is sufficient and need not be repeated at each recess?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: Yes.

(Short recess.)

The Court: Will you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Mr. Mandel: So stipulated.

Mrs. Root: Yes, so stipulated.

The Court: You may proceed.

Mr. Binns: I have an automobile registration card which I would like to have marked for identification.

(The document referred to was marked as Plaintiff's Exhibit No. 9, for identification.)

(Testimony of A. V. Beckner.)

Mr. Binns: And may the pink slip be marked as a part of the same exhibit, your Honor?

The Court: Yes.

Mr. Binns: I am going to ask that it be stipulated photostatic copies may be substituted for this and the Government's first exhibit at the conclusion of this case.

Mrs. Root: There is no objection to that.

Mr. Mandel: We have no objection.

Q. By Mr. Binns: I show you these two certificates, [28] Government's Exhibit 9 for identification, and ask you if you have seen them before?

A. Yes, I have.

Q. Where did you see them?

A. In the side coat pocket of the coat belonging to the defendant Santana.

Q. Will you please observe the license number that is given there? What is it?

A. 70 C 633 for a Dodge Six, two-door sedan.

Q. Was that the license number that was on the Dodge that was parked outside? A. It is.

The Court: It will be admitted as Government's Exhibit 9.

(The document referred to was marked as Plaintiff's Exhibit No. 9, and was received in evidence.)

Mr. Binns: Your Honor, I have no further questions of this witness. However, I have this problem—Police Officer Reid is under subpoena to appear in another case at two o'clock. I wonder if I could have the favor of putting him on now out of

(Testimony of A. V. Beckner.)

order? I am only going to ask him a question or two.

Mrs. Root: As far as we are concerned, we have no objection.

Mr. Binns: And dispose of him before we cross examine [29] Mr. Beckner.

Mr. Mandel: Let me ask you this, Mr. Reid will be available for cross examination?

Mr. Binns: I think his testimony will be short enough so he can be disposed of.

Mr. Mandel: We have no objection.

Mr. Binns: Officer Reid, will you be sworn?

WILLIAM T. REID,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: William T. Reid.

Direct Examination

By Mr. Binns:

Q. Where do you live?

A. Los Angeles, California.

Q. How long have you lived there?

A. 25 years.

Q. Where are you employed?

(Testimony of William T. Reid.)

A. Police officer, attached to the Narcotic Detail, Central Detective Bureau.

Q. How long have you been so employed?

A. 11 years the first day of May, 1946.

Q. Are you the officer that was with Officer Beckner [30] on the occasion about which he has testified here?

A. I am.

Q. Calling your attention to the time when you went back and went into the trailer and found the defendant Santana—

A. Yes.

Q. Can you testify as to what occurred inside that trailer?

A. Inspector Beckner inserted the key in the outside door of this trailer, unlocked the door. I opened the inside screen door and entered the trailer. At this time Mr. Santana, who was lying on a bunk in the front end of the trailer, threw the bedclothes off and threw his feet on the floor and sat up on the side of the bed.

Q. Was there any conversation had?

A. I asked Mr. Santana—

Mrs. Root: Of course this is hearsay as to the defendant Gonzalez. I guess we understand that.

The Court: Yes, it will be limited to the defendant Santana and is not binding in any way upon the defendant Gonzalez.

Mrs. Root: Thank you.

The Witness: I asked the defendant what his name was. He said "Santana." I asked him if he owned the car that was parked outside of the trailer and he stated that he did. [31] I said, "Put your

(Testimony of William T. Reid.)

clothes on" and he put on a shirt and then I asked him where the keys to the car was and he pointed up to a coat that was hanging on a hangar in the center of the trailer. Inspector Beckner reached into the coat pocket and took a key from the pocket and showed him the key and asked him if that was the key and he said it was.

Q. I might ask you now, were you speaking in Spanish? A. I was not.

Q. Was Inspector Beckner speaking in Spanish?

A. No, sir.

Q. All right, continue.

A. And Inspector Beckner left the trailer. I told the defendant, I said, "Come outside." I took him outside and stood him alongside of the right door of this Dodge car while Inspector Beckner opened the door and entered the car and looked around the back end of the car, the back, rear seat—looked in the glove compartment and then started a search under the dashboard of the car. Inspector Beckner came out from under the dashboard with something in his hand wrapped in a white napkin. He unwrapped it and showed it to the defendant and says, "What is this?" The defendant did not make any statement. I then took the defendant into the trailer, and as he entered the trailer he started a lot of rapid Spanish conversation with me, which I did not understand. After taking him into the trailer I told him to [32] complete dressing and asked him how long he had that car. He stated that he had bought it one week previous, in

(Testimony of William T. Reid.)

Spanish. He answered me in Spanish, saying, "una semana pasada" and I asked him where he had bought the car and he answered in San Francisco. I asked him how long he had been staying in the trailer and I believe he stated two nights.

Q. Did he state that in Spanish or English?

A. In Spanish. He had completed dressing at that time and I made a search of the trailer for further narcotics and did not find them.

Mrs. Root: Will you read the question?

(Question read.)

Q. By Mr. Binns: Do you remember anything concerning a second key?

A. Yes. Inspector Beckner came back into the trailer, came to the door of the trailer and said that the turtleback of the car was locked and asked the defendant—I says, "Where is the key for the back?" And he pointed to a pair of pants and I was looking in the side pocket and he said, "No" and pointed to the watch pocket of the pants and I reached into the watch pocket of the pants and removed a key which I handed to Inspector Beckner.

Mr. Binns: That is all. You may cross examine.

Cross Examination

By Mr. Mandel:

Q. Officer Reid, what time of day or night was it that you came to this trailer where you found Mr. Santana?

A. It was about midnight or very shortly after midnight on the 10th.

(Testimony of William T. Reid.)

Q. And where were you just before you came there?

A. We had driven Mrs. Gonzalez from La Canada to the trailer court at 2634 Garvey Road. I believe that is the number.

Q. Up until the time that you drove up to Mr. Santana's place you had never met the gentleman before, had you?

A. No, sir.

Q. Never knew who he was, did you?

A. Had heard about him, that is all.

Q. From Mrs. Gonzalez?

A. And prior to that.

Q. You had seen him?

A. I had not seen him.

Q. Did you ever see him before you saw him on the night of the 10th or the 9th of September, or October, rather?

A. I did not.

Q. And was anyone there other than the defendant at [34] that time, the defendant Santana?

A. He was alone in the trailer.

Q. And he was asleep at the time, I take it?

A. Evidently.

Q. Well, I mean you saw him asleep when you came there?

A. He was lying in bed.

Q. And he was in his underwear, was he?

A. Yes, sir.

Q. Winter underwear, was it not?

A. Yes, sir.

Q. And you knocked on the door or you came in? How did that occur?

A. Inspector Beckner opened the outside door

(Testimony of William T. Reid.)

and I reached through a little hole in the screen door and unhooked it and walked in the trailer.

Q. You did not tell him who you were at the time? A. "Police officers."

Q. He did not make any objection to your coming in, did he? A. He did not.

Q. And then he did not speak in English? He did not speak good English, did he?

A. He never uttered a word in English outside of "San Francisco."

Q. You say he never uttered a word in English?

A. Only "San Francisco."

Q. You testified at some prior hearing, did you not? A. I did.

Q. I show you a copy of a preliminary examination——

Mr. Mandel: Counsel, this is a copy of the preliminary examination given in the State court, Division No. 3, before Honorable Joseph Chambers on the 23rd of October, 1945.

Mr. Binns: All right.

Q. By Mr. Mandel: At that time did he speak in—you say he did not speak in English at all?

A. Outside of the words——

Q. I mean in——

Yes, in English. A. No.

Q. He did not speak in English at all?

A. "San Francisco" and "Yes" and "No", but no other conversation.

Q. I show you your testimony on page 19 of the

(Testimony of William T. Reid.)

transcript, lines 8 to 14, inclusive. Will you please read that to yourself.

The Witness: That is right, that is correct.

Mr. Mandel: May I read this, your Honor?

The Court: Did you so testify at that time?

The Witness: I did.

Mr. Mandel: May I read it? [36]

Mr. Binns: You may read it now.

Mr. Mandel: The witness Reid was on the stand and the testimony was:

“I asked the defendant where he had obtained this car and he stated that he had got it in San Francisco. This conversation was in broken English—English and broken Spanish. After looking at the defendant’s passport papers, I asked him how long he had been in this country and he stated, I believe, “Three or four weeks’.”

Q. Then the defendant did speak to you partially in English and partially in Spanish, is that correct?

A. Outside of “Yes” and “No” he spoke in Spanish.

Q. When you talked to him and you asked him about the possession of this can of opium that you discovered in the glove compartment of the car, I believe your testimony was he said that he would not answer that question as to the ownership of that can?

A. He did not answer the question until I started taking him back into the trailer, when he

(Testimony of William T. Reid.)

just started talking Spanish very rapidly, which I do not understand a word of.

Q. You don't know whether he was denying the ownership of the car, do you, Officer?

A. That was after we asked him——

Q. You don't understand Spanish, do you, Officer? [37]

A. I don't understand that.

The Court: That is argumentative.

Q. By Mr. Mandel: You don't understand Spanish? A. A little.

Q. You know "Una semana pasada" means one week ago. Is that the extent of your Spanish?

A. A little bit more.

Q. Did you understand the defendant?

A. I did.

Q. Everything that he said?

A. Not everything.

Q. And, as a matter of fact, he began speaking so rapidly that you could not understand, isn't that true?

A. At that time when he left the car to enter the trailer I did not understand a word he said.

Q. When Mrs. Gonzalez was brought over to the trailer this man started talking in Spanish, did he not? A. I told him to keep quiet.

Q. Do you know what he was telling—what he was saying at that time when he was addressing his remarks to Mrs. Gonzalez?

A. He started speaking to Mrs. Gonzalez and I refused to let him speak to her.

(Testimony of William T. Reid.)

Q. But you don't know what he said, do you?

A. He only said about two words. [38]

Q. That is all he said? A. That is all.

Q. Now then, you didn't—you searched this man's premises—I mean where he was staying, very thoroughly, did you not? A. I did.

Q. You did not find anything but this particular can in the glove compartment, isn't that correct?

A. In the Dodge car the can was found.

Q. I am speaking of the Dodge car that was right by the trailer. Isn't that true?

A. Yes, sir.

Q. You did not find anything else, however?

A. No, sir.

Q. And you and your brother officer searched very thoroughly and exhaustively, did you not?

A. We did.

Q. Is that correct? A. That is correct.

Q. And you searched the defendant's own person and also the room in the trailer, did you not?

A. I did.

Q. You did not find anything there?

A. I did not.

Q. All right. He answered very candidly and frankly [39] your questions as best he could as to the cars, did he not?

A. (No answer.)

Mr. Binns: That calls for a conclusion.

The Witness: Yes.

Q. By Mr. Mandel: He did say the Dodge car

(Testimony of William T. Reid.)

belonged to him and explained how long he had it, did he not? A. He said about a week.

Q. Did he say from whom he purchased the car?

A. San Francisco, that is all.

Q. Did he say the person from whom he purchased it? A. He did not.

Q. You saw the pink certificate, didn't you, at that time? You had it in your possession?

A. I did.

Q. And you knew from the pink certificate that it had the name Jose Gonzalez, did you not?

A. That is correct.

Q. Then you asked him, did you not, how he came into possession of the car and how he purchased it, did you not? A. I did.

Q. And then he told you that he had purchased it in San Francisco from Jose Gonzalez, didn't he?

A. He stated he purchased it in San Francisco.

Q. From Jose Gonzalez, is that true?

A. I did not ask him that question. [40]

Q. And didn't he say the Jose Gonzalez was the brother-in-law of Mrs. Gonzalez?

A. He did not.

Q. Did the defendant say with reference to the Plymouth car that that Plymouth car was his car and that it was supposed to have gone into Mexico to his wife? A. Not to me, he did not.

Q. Did not say that? A. No.

Q. And didn't he say while he was up in San Francisco or did you question him about it, that while he was in San Francisco that Mrs. Gonzalez

(Testimony of William T. Reid.)

met with an accident in the car and was at the New-hall Hospital and that they asked for his car, the Plymouth car which was in Los Angeles, when they went up to San Francisco, and that they could use it during the time that the car was not being used that had been wrecked? Was there any conversation along that line? A. No, sir.

Q. You did not ask him anything about that at all, did you? A. I did not.

Q. And did the defendant tell you that this Plymouth car had been brought back from Mexico by Mrs. Gonzales without his knowledge?

A. Not to me. [41]

Q. To whom in your presence? To someone else?

A. Not in my presence, no.

Q. When you said "Not to me" do you mean you never heard of the conversation?

The Court: Counsel, that language is perfectly understandable.

Q. By Mr. Mandel: You never heard that conversation? A. I did not.

Q. Very well. Have you told us all the conversations at all times you had with the defendant Santana?

A. That is all I recall at this time.

Q. You never questioned him again?

A. I did not.

Q. You never questioned him in Spanish, of course, not speaking the Spanish language?

A. I never questioned him again after that evening.

(Testimony of William T. Reid.)

Q. And do you know anybody by the name of Luis Gonzalez? A. I do not.

Q. Do you know anybody by the name of Sanford now in the County Jail? A. I do not.

Q. I will give you the full name—Francis Julio Sanford. Did you ever hear of that person before?

A. I might have handled the boy three or four years [42] ago. I don't recall the name.

Q. Have you handled such a boy recently?

Mr. Binns: Would it help you if you saw his name written?

Mr. Mandel: I have a subpoena for him to be here.

(Handing paper to the witness.)

The Witness: No. Yes, I do know a Mexican boy by the name of Sanford who I handled. He lived with his mother. That was three or four years ago. I don't know if he is the same one or not. I wouldn't know unless I saw him.

Q. By Mr. Mandel: You had nothing to do with the arrest of this boy, did you?

A. Not the case that he is in the County Jail for now, no, sir.

Q. During the time that you were talking with Santana there was never a Spanish interpreter present, was there? A. There was not.

Q. You never had any further conversation with the defendant Santana?

The Court: That question has been asked and answered.

Mr. Mandel: That is all.

(Testimony of William T. Reid.)

Q. By Mrs. Root: Mr. Reid, did you note the contents of clothing in the trailer, whether they appeared to be women's clothing—the place where Mr. Santana was located?

A. Women and men's clothing. [43]

Q. And at the time you saw Mr. Beckner take the key to the Dodge car, you are referring to the Dodge car which was parked immediately outside of the trailer? A. Yes.

Q. And the key was taken from Mr. Santana's trousers or coat pocket?

A. One from the coat pocket and one from the trousers pocket.

Q. Of Mr. Santana?

A. I don't know. They probably was his clothes.

Q. Well, in other words, he indicated when he was asked for the key "up there"? A. Yes.

Q. And also as to the pink slip for the Dodge car that was parked immediately outside of the trailer, that was found in the coat pocket of Mr. Santana? A. Inside coat pocket.

Q. Found in his inside coat pocket?

A. Yes.

Q. And there was conversation relative to that pink slip and you showed it to him at the time of the conversation? A. I did.

Q. And it was then that there was an indication from Mr. Santana that he had purchased that Dodge automobile a week ago? [44] A. Yes.

Q. And the Dodge automobile is the automobile

(Testimony of William T. Reid.)

where you saw Mr. Beckner take the one can of opium, wrapped in the linen napkin or the napkin, from underneath the dashboard of the car?

A. Yes.

Mrs. Root: That is all.

Mr. Mandel: Just a few questions with the permission of the court.

The Court: Proceed.

Q. By Mr. Mandel: This trailer, the car, rather, was locked, was it not? A. Yes.

Q. And you asked Mr. Santana if he had locked the car, is that correct?

A. I believe someone else asked him that question.

Q. What was the answer that he gave?

A. I was not present at the time.

Q. You were not present when the answer was given? A. Yes.

Q. Mr. Beckner spoke to him, did he not?

A. (No answer.)

Q. And you did not hear all the conversation that was had in the presence of Mr. Beckner?

A. I did. The defendant was in my custody at all [45] times.

Q. Well, then, at that time didn't he say he had not locked the automobile?

A. (No answer.)

Q. How is that?

A. The car was locked up tight when we took the key from him to open it.

(Testimony of William T. Reid.)

Q. You asked the defendant if he had locked it, did you not? A. I did not.

Q. How is that? A. I did not.

Q. Well, did any officer in your presence ask him that question?

A. Not in my presence.

Q. Did you ask the defendant how he happened to be in the trailer?

A. I believe he stated that he had been there for two nights.

Q. Well, did you ask him how he happened to be there? A. No, I did not.

Q. How is that?

A. No, not that I recall. I might have asked him what he was doing in the trailer or if he had permission to be in the trailer. I don't recall his answer at this time. [46]

Q. What is that now?

A. I don't recall his answer at this time.

Q. You don't recall what his answer was?

A. (No answer.)

Q. Did you ask the defendant as to whether or not he had been there at the request of Mr. Gonzalez, the husband of Mrs. Gonzalez?

A. I did not.

Q. Did he say anything about that?

A. He did not to me.

Mr. Mandel: That is all.

Mr. Binns: No further questions.

May Officer Reid be excused?

Mrs. Root: As far as we are concerned.

(Testimony of William T. Reid.)

Mr. Mandel: Yes. I have been looking over the preliminary transcript. There is one question I was interested in but I haven't found it yet. Are you going to be busy this afternoon?

The Witness: Yes, I have a trial in the state court.

Mr. Mandel: If that matter is not found he will be excused.

The Court: We are not going to hold him here, but he will be available if he is needed.

Mr. Binns: Mr. Beckner, will you take the stand again? [47]

A. V. BECKNER,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, was recalled and testified further as follows:

Cross Examination

By Mrs. Root:

Q. Mr. Beckner, you arrived at this trailer some time around 7:30 of the evening of October 10th or 11th, which was it?

A. On the evening of October 9th at about—it was before seven p.m.

Q. You had not been there during the afternoon?

A. On one occasion I was there.

Q. And about the hour, please, that you were there?

A. About three o'clock.

Q. But not earlier than three?

(Testimony of A. V. Beckner.)

A. I believe not.

Q. Now, to your knowledge none of the other officers were there before you were there at three?

A. I couldn't answer that.

Q. Now, at the time that you arrived at the trailer at three, did you see any persons about the trailer?

A. No; it was locked.

Q. And no cars parked nearby?

A. No cars. [48]

Q. Did you note a cleaning establishment somewhere close to the trailer?

A. Do I know of one?

Q. Did you notice one?

A. I didn't pay any particular attention.

Q. And when you arrived at about the hour of seven did you see any cars parked at or about the trailer?

A. There were no cars.

Q. And were the lights on or off in the trailer?

A. The lights were on.

Q. On? A. Yes.

Q. And during the daytime, at three o'clock when you were there, you could not tell whether or not there was anyone on the inside of the trailer?

A. I couldn't tell that.

Q. Now, when you ultimately saw Mrs. Gonzalez that was about what hour?

A. About 7:30 p.m.

Q. And when she drove in did she drive in close to the trailer?

A. Yes.

Q. And what did she do immediately upon parking the car?

(Testimony of A. V. Beckner.)

A. Got out of the car and entered the trailer.

Q. And were the lights of her car off at the time she left it?

A. She switched them off, yes.

Q. Now, when I say "her car" I mean the car that was registered to Santana, but the one she was in possession of at the time.

A. Yes.

Q. Now, when she went into the trailer about how long did she stay?

A. She remained in the trailer.

Q. For how long?

A. Until about 9:00 p.m.

Q. And all of the time the lights were on?

A. They were.

Q. And you could see what she was doing in the trailer, could you not?

A. I looked in twice.

Q. And during the times that you looked in what was she doing?

A. One time she was moving about in the center of the trailer, I believe at the closet, and the other time she was lying down on a bed reading a magazine, I believe it was.

Q. And upon her departure from the trailer how far were you from her?

A. I would say around 100 feet—possibly over 100 [50] feet.

Q. Were you in your car at the time?

A. I was afoot at that particular time.

Q. And when she walked out of the trailer she

(Testimony of A. V. Beckner.)

got into the car that was then registered to Santana, is that correct? A. She did.

Q. And drove off? A. Yes.

Q. And did you see any movement made by herself in the car other than to merely start the motor and turn on the lights and move?

A. Merely to start the car and leave.

Q. Now, at the time that you apprehended Mrs. Gonzalez did you have a conversation with her relative to the time that she had obtained the key that matched the suitcase? In other words, was there any conversation as to whether or not she had obtained the key from the trailer as of that date?

A. No, no.

Q. Did she say anything about the key that opened the suitcase at all to you?

A. No, only that it was on her key ring where I found it, of course.

Q. But you did not ask her whether or not she had [51] taken the key ring from the trailer as of that day or not?

A. No. I did ask her to show me each one of the keys and what it belonged to and she enumerated each key, one for home home in Westmoreland and one for the padlock on the gate at her home at Westmoreland and one key for the auto trailer, two keys for suitcases, other suitcases. She enumerated each key to show me what they were for.

Q. And she took the key ring containing the keys that you have enumerated from her purse?

A. She did.

(Testimony of A. V. Beckner.)

Q. And she had two purses at the time, did she not?

A. She later made that statement. Frankly, it is my honest opinion she had one purse.

Q. Well, do you recall definitely by observation as to whether she had one purse or two purses or how many purses she did have?

A. It is my opinion she had one purse with her.

Q. But you did not take any particular notice at the time? A. I did not.

Q. And as to the conversation with Mrs. Gonzalez, you asked her if she had a key to the suitcase, is that correct? A. Yes. [52]

Q. Now, you had merely looked at the suitcase previous to that, isn't that correct? A. I had.

Q. You had not tried the lock, had you?

A. I had tried the lock, yes.

Q. And where was she when you tried the lock?

A. At that time she was seated in the front part of the vehicle.

Q. And where were you?

A. I was on the ground on the driver's side.

Q. There was no play as between you or she relative to any conversation about the fact that the suitcase was locked or she was looking over that way or anything of that sort?

A. I think I remarked, "It is locked; do you have the key for it?"

Q. And what did she say?

A. She started looking in her purse and selected this bunch of keys.

(Testimony of A. V. Beckner.)

Q. And immediately upon your finding the contents of the suitcase and the cans, was when she said, "Well, I know nothing of the contents; I thought it was tools in the suitcase"?

A. No, not at that time. There was no mention of any tools.

Q. When did she make that statement? [53]

A. When she came to the State office after she was released on bond. That was the first indication that I had about the suitcase containing tools previously.

Q. But what did she say immediately upon your discovering the cans in the suitcase?

A. I said, "It is opium. Who does this belong to? What do you know about it?" "If that is opium," she said, "I never saw it before. I don't know anything about how it got in my suitcase," and that was about the extent of her answer.

Q. Now, did she tell you as to when she obtained the suitcase and had placed it into the car that she was driving of Santana's?

A. She said that she had removed the suitcase from the auto trailer just a few moments prior to her departure. I told her, I said, "That is not true because we had the car and trailer under observation since she arrived there," and that she did not take the suitcase from the trailer while we were present.

Q. Now, Mr. Beckner——

The Court: What was her answer to that?

The Witness: There was no reply.

(Testimony of A. V. Beckner.)

Q. By Mrs. Root: Mr. Beckner, at the time that she said, "her departure", had she told you up to that time that she had departed from the trailer at about the hour of 2:30 [54] in the afternoon and then returned at 7:30 that evening?

A. She has since made that statement on January 22nd. She did make the statement that you have related, but not on the evening of her arrest.

Q. In other words, on the evening of her arrest she said she took the suitcase at the time of her departure? A. That is right.

Q. Whereupon you said that was impossible because you had had the car and trailer under observation from three o'clock that afternoon on?

A. I did.

Q. And she stood mute?

A. That is right.

Q. That is right; but on the 22nd of January she told you that she had been there at about the hour of 2:30 and had taken the suitcase at that time? A. That was the story she told.

Q. She also told you that it was the tools that she believed, on January 22nd, in this conversation, that were in the suitcase, is that correct?

A. Well, she had related that previously, on her first visit to the office when she wanted her clothing and material that was in the car, about the tools being in the car.

Q. And throughout the entire conversations that you had with Mrs. Gonzalez they all amounted to

(Testimony of A. V. Beckner.)

the fact that [55] she did not know the suitcase contained cans of opium?

A. That is what she said.

Q. Now, Mr. Beckner, when you took from the pocket of Mr. Santana's coat after he had said that the pink slip or the white slip was in the pocket, or a conversation to that effect, did you notice on the pink slip or white slip any date or transfer of that automobile?

A. I did not particularly notice, no.

Q. I believe that you have it in front of you. Would you mind looking at it?

A. No, I don't have it.

The Court: It will speak for itself, counsel.

Mrs. Root: It is preliminary. I am going to ask a question.

Q. Mr. Beckner, at the time that you took it out of the coat pocket of Mr. Santana, did you look at it for the date of transfer?

A. Not particularly.

Q. Well, did you have any conversation with Mr. Santana about the date of the transfer of that car at the time you were holding it in your hand, when you had taken it from his pocket?

A. No, there was no mention about the certificate having been transferred at that time.

Q. In other words, there wasn't any conversation as [56] to how long he had had the car?

A. Yes.

Q. What was that conversation?

(Testimony of A. V. Beckner.)

A. Well, I overheard some of that conversation and I believe I was told that it was a week.

Q. In other words, as to whether or not that was his answer at that time you are not just clear, is that right?

A. I am not positive, no.

Q. Now, as to the can of opium that was found in the Dodge car, the keys for which you obtained from Mr. Santana's pocket, from your experience in dealing with narcotics can you tell me as to whether or not it is like and kind to the 16 cans found in the suitcase?

A. Well, it looks very similar.

A. And it bore the number 60, if I am correct?

A. Yes, it did.

Q. And some of the other cans, of the 16 cans found in the suitcase, bore the number of 60 as well?

A. That is right.

Q. And the type of numbering on the cans, either of the 60 or 59, were they similar in type and kind?

A. They appeared to be, yes.

Mrs. Root: That is all, thank you, Mr. Beckner.

Q. By Mr. Mandel: Officer Beckner, from your narrative I take it that Mrs. Gonzalez was the first person that was [57] arrested in this particular case?

A. She was.

Q. And you were accompanied by Officer Reid and some other officer?

A. Russell.

Q. And you had this—you say you had this automobile under observation and surveillance for some time?

A. Yes.

(Testimony of A. V. Beckner.)

Q. Before the arrest was made? A. Yes.

Q. In the conversation that you had with Mrs. Gonzalez did you ascertain whether or not she had just come from some other jurisdiction or was that related to you?

A. She stated that she had arrived that day from Imperial Valley.

Q. Was there anything said about Santana being on the trip with her from the Imperial Valley?

A. No.

Q. Did she say she had gone with the car to Mexico? A. No; not that I remember.

Q. No conversation about that? Did she say Mr. Santana directed her to go to Mexico or come back or anything of that sort?

A. Well, at a conversation on January 22nd Mrs. Gonzalez stated that—— [58]

Q. Wait a minute. This conversation was not in the presence of this defendant?

A. You are right. That is correct.

The Court: You are asking him about conversations.

Mr. Mandel: Yes, I am. It is really my fault, but I meant at the particular conversation when you first apprehended her was there any conversation about that? A. Not about that, no.

Q. Now, how long did you have this car under observation, did you say?

A. Since the 8th, which was Monday. Some time in the morning on October 8th and intermittently until the arrest of Mrs. Gonzalez.

(Testimony of A. V. Beckner.)

Q. During this time did you ever see Mr. Santana around there?

A. I had not seen him personally, no.

Q. Now then, later upon information that was furnished you by Mrs. Gonzalez you came to this trailer in Alhambra?

A. Yes.

Q. And accompanied by Officer Russell, was it?

A. Russell and Reid.

Q. And then you came into the trailer at that time. It was dark? I mean, there were no lights on?

A. No lights on when we arrived.

Q. And you announced yourselves as officers and [59] knocked on the trailer, I presume?

A. Said, "Police officers."

Q. You do not speak Spanish, do you, Officer?

A. Very little.

Q. And when you announced yourselves as police officers the defendant was in bed?

A. Well, when I saw him he was. He was in a sitting position, I believe, with his feet on the floor.

Q. You came in after Reid had been there?

A. Yes, that is right.

Q. You went to the car while Mr. Reid went into the trailer?

A. No. We entered the trailer and went to the car later. I went to the car first before going in the trailer and then we both entered together.

Q. Now then, did Mr. Reid converse with the defendant or was it both of you or one?

A. Reid did most of the talking to the defendant.

(Testimony of A. V. Beckner.)

Q. And you were not present during the entire conversation, I take it? A. No.

Q. You went out one time to open the car?

A. Well, we were all three together when I went out to open the car originally.

Q. You could not understand all that the defendant [60] was saying, could you?

A. Not all that he was saying, no.

Q. He seemed to be speaking in broken English and Spanish?

A. Yes. That appeared to be so.

Q. I mean broken English? A. Yes.

Q. And a great deal of the conversation was interspersed with Latin expressions, is that correct?

A. Yes, I believe there was.

Q. And you could not say definitely and with any certainty you understood what he was saying, all that he said? A. No, I couldn't.

Q. But he did make it clear, did he not, to you that he was not the owner of that opium or knew anything about it, isn't that true?

A. No, he didn't make it clear to me. It isn't clear yet.

Q. He didn't? A. No.

Q. He has not made it clear to this time?

A. No, he hasn't.

Q. Well, you don't understand what he said?

A. No, I don't.

Q. Well, he was speaking in rapid Spanish, wasn't he, [61] to you when you asked him about these things?

(Testimony of A. V. Beckner.)

A. Yes, he would reply in Spanish.

Q. During all this time that you had him under questioning and were going around you were searching the place as Officer Reid testified, isn't that right?

A. Yes, I was out in the car part of the time, in it and in the back end of the car looking it over.

Q. There was never any reluctance on this man's part to permit you to search?

A. We didn't consult him about searching the place.

Q. Well, you asked for his keys to the compartment of the car and you asked for the passport and asked him to take the keys from the pants and he gave them to you?

A. Yes; he indicated where they could be found.

Q. There was never any hesitancy upon the part of the defendant to give you anything you might have asked for, if he understood it?

A. There didn't appear to be, no.

Q. Did you explain to him what part of the car the opium was found in?

A. He was there and saw me find it.

Q. And this car was locked before that time?

A. Both doors were locked.

Q. Do you know whether a question was directed to the defendant as to whether or not he had locked the car? [62]

A. It is my information that the question was addressed to him by another officer at a later date.

Testimony of A. V. Beckner.)

Q. Well, you don't know that?

A. I don't know it—I did hear it in a court of law, however.

Q. Do you know a man by the name of Luis Gonzalez?

A. I have since learned of a man by that name.

Q. Was he related to one of the parties involved in this case?

A. I believe it is some relation to Mrs. Gonzalez.

Q. Do you know whether or not such a person used this car, this Dodge car during part of this time? A. I don't know that.

Q. You don't know that? Do you know whether he used it on the 8th or 9th or 7th of October of this year? A. I don't know that.

Q. Of last year, I mean to say?

A. No, I don't know that.

Q. Where did you find out about Luis Gonzalez?

A. When Mrs. Gonzalez told me about him. I forget her exact conversation but he is some relation to her.

Q. Was it mentioned that he was with her or saw her that day or prior to that time?

A. I forget why she brought his name up, but he did mention Luis Gonzalez. [63]

Q. That is a brother?

A. Not in connection with this transaction, however.

Q. Nothing was mentioned about this transaction? A. No.

(Testimony of A. V. Beckner.)

Q. Do you know a man by the name of Francisco Julio Sanford? A. Yes, sir.

Q. Do you know whether or not any mention of Luis Gonzalez was mentioned in connection with this man's arrest?

A. Yes, he mentioned it to me.

Q. He did mention it? A. Yes.

Q. Didn't he mention that there was—that this man was an opium—was in the opium business, this man?

A. This man Sanford told me a very peculiar tale.

Mrs. Root: Just a moment, counsel. I am going to object on the ground that is hearsay, certainly as to the defendant Gonzalez.

The Court: It is incompetent, irrelevant and immaterial as far as this case is concerned. We are not trying somebody who is over in the county jail; we are trying the two defendants who are in court.

Mr. Mandel: It is a preliminary question. May we approach the bench?

The Court: No, I don't think there is any necessity to [64] approach the bench.

Q. By Mr. Mandel: Do you know the man?

A. I met him for the first time while this case was pending, yes.

Q. And you do know Luis Gonzalez?

A. No, I don't know Luis Gonzalez.

Q. I believe you stated that the opium—I do not wish to reiterate, if your Honor please, but I want to get it clear in my own mind and the jury's mind,

(Testimony of A. V. Beckner.)

this opium, this one can of opium that was found in the Dodge car near the trailer where Mr. Santana was sleeping, was found, according to your testimony, in the glove compartment.

A. On top of the glove compartment, under the dashboard of the vehicle.

Mr. Mandel: That is all.

Mrs. Root: If your Honor, please, I have a couple of further questions.

Q. Mr. Beckner, the suitcase containing the cans of opium that were found in the car, will you tell me where it was found in the car, please?

A. Where the suitcase was?

Q. That is right.

A. It was on the floor in the rear compartment of the vehicle. It is a four-door sedan.

Q. In other words, not in the turtleback? [65]

A. No.

Q. But where the back seat is?

A. That is right.

Q. Did you find some dirty clothes, women's wearing apparel in the back seat, too?

A. There was a pillowcase full of dresses and under clothing and so forth belonging to women.

Q. And also did you search the contents of the dirty clothes for narcotics? A. I did.

Q. And you did not find any, did you?

A. I did not.

Q. And did you search the purse of Mrs. Gonzalez? A. I did.

Q. And you did not find any narcotics there?

(Testimony of A. V. Beckner.)

A. I did not.

Q. In other words, the narcotics that you found in the car that was registered to Mr. Santana, but in the possession of Mrs. Gonzalez, were all contained in this suitcase? A. That is right.

Mrs. Root: Thank you very much and that is all.

Mr. Binns: No questions, your Honor.

(Witness excused.)

The Court: It is now 12:00 o'clock and at this time we will take our noon recess until 1:30. The jury will bear [66] in mind the admonition the court has heretofore given you.

(Whereupon, at 12:00 o'clock noon, a recess was had until 1:30 o'clock p.m. of the same day.) [67]

Los Angeles, California

Wednesday, February, 20, 1946, 1:30 p.m.

The Court: Will you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Mr. Mandel: So stipulated, your Honor.

Mrs. Root: So stipulated.

Mr. Binns: Yes, your Honor.

The Court: Let the record so show. Call your next witness.

Mr. Binns: Call Mr. Mallory.

G. E. MALLORY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: G. E. Mallory.

Mr. Binns: Your Honor, counsel has offered to stipulate and I will try to state the stipulation.

The defense will stipulate that Mr. Mallory is a chemist, familiar with the nature of smoking opium and would testify that the contents of the brass cans which are in evidence as Government's Exhibit No. 5 and Government's Exhibit No 7 is smoking opium.

Mrs. Root: The defendant Gonzalez will stipulate that the gentleman would so testify. [68]

Mr. Mandel: So stipulated.

Mr. Binns: And is there any question as to his being an expert?

Mrs. Root: I will stipulate that he would testify that he is an expert and had been in the business.

The Court: Let us put on the evidence. I have some questions I want to ask if there is any question about this being smoking opium. If that is an issue in the case the jury is entitled to know this witness' experience and his knowledge on the subject matter.

Direct Examination

By Mr. Binns:

Q. Where do you reside, Mr. Mallory.

A. San Francisco, California.

10 Josephine Gonzales vs.
(Testimony of G. E. Mallory.)

Q. And what is your position there?

A. Chemist employed by the United States Treasury Department.

Q. How long have you been a chemist?

A. Approximately 25 years.

Q. How long have you been employed by the Treasury Department?

A. Approximately 25 years.

Q. Are you familiar with smoking opium?

A. Yes, sir.

Q. Will you please relate your qualifications as an [69] expert in the field of smoking opium?

A. I graduated from the University of Colorado in chemistry and pharmacy and I have made an analysis of narcotics for approximately 25 years for Government Bureaus.

Q. Are you familiar with smoking opium?

A. Yes, sir.

Q. I show you Government's Exhibit 5 in evidence, and ask you if you have ever seen those before? A. Yes, sir.

Q. How can you tell that you have?

A. My initials will be on them and I brought them down to this courtroom from our laboratory.

Q. And where did you receive them?

A. By registered mail on the 25th day of January, this year.

Q. From where?

A. From the Narcotic Bureau of Los Angeles.

Q. Did you make an examination of the substance contained in those cans?

(Testimony of G. E. Mallory.)

A. Yes, sir.

Q. In your opinion what was in those cans?

A. Smoking opium.

Q. You will notice there is a substance which is being exuded by some of those cans. Will you tell us what that substance is? [70]

A. That is smoking opium.

The Court: Do you know the value of this opium?

The Witness: No, sir; not at the present time.

Q. (By Mr. Binns) I show you Government's Exhibit 7—it is a can removed from Government's Exhibit 7, and ask you if you have seen that before? A. Yes, sir.

Q. Did you make an examination of the contents of that can? A. Yes, sir.

Q. Can you tell us what, in your opinion, is in that can? A. Smoking opium.

Mr. Binns: You may cross examine.

Cross Examination

By Mrs. Root:

Q. I would like to know if the can that was given to you separately—I would like to know if all the opium in all of the cans that you examined was alike?

A. No quantitative determination or analysis was made. It was only qualitative.

Q. What about the qualitative?

A. As far as I could tell they were all similar but without a quantitative analysis that is only a mere guess.

(Testimony of G. E. Mallory)

Q. And what is your occupation?

A. Chemist and Analyst.

Treasury Department.

Q. How long?

A. About 10 years.

Q. How long?

Treasury

A. Yes.

Q. Are you?

A. Yes.

Q. Will you

an [6] expert?

A. I graduated

in chemistry and

analysis of narcotics

for Government Bureau.

Q. Are you familiar with

A. Yes, sir.

Q. I show you Government of
denial and ask you if you have
before? A. Yes, sir.

Q. How can you tell that?

A. My initials will be on
them down to this courtroom.

Q. And where did you receive

A. By registered mail on
May this year.

Q. Where?

A. From the Treasury Bu

Q. Did you receive any

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of Rudolph S. Pena.)

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defendant on the 10th floor of
ber 22, 1945.

tion with your luries?

Q. You first taxed to the
us who vas in the

Exhibit 7—
Exhibit 7, and with me
fore? A.

Q. Did you make
of that can? A.

Q. Can you tell us what
that can? A. Smoking op

Mr. Binns: You may cross

Cross Examination

By Mrs. Root:

Q. I would like to know if the
given to you and I would be
all the opiure and how
was alike?

A. No quantity
was made. It was

Q. What about the

A. As far as I could
but without a quantitative
mere guess.

(Testimony of G. E. Mallory.)

Mrs. Root: Thank you very much. That is all.

Mr. Mandel: No cross examination. [71]

The Court: That is all.

Mr. Binns: Mr. Pena.

RUDOLPH S. PENA,

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, was examined and
testified as follows:

The Clerk: Will you state your full name?

The Witness: Rudolph S. Pena.

Direct Examination

By Mr. Binns:

Q. Where do you live, Mr. Pena?

A. Los Angeles, California.

Q. How long have you lived here?

A. 24 years.

Q. Where are you employed?

A. Los Angeles Police Department, member of
the Narcotic Detail.

Q. Are you familiar with the Spanish language?

A. Yes, sir.

Q. Is that your native language?

A. It is.

Q. You say "Spanish language." Is that similar
to the Mexican language?

A. You say "Mexican language". I don't know

(Testimony of Rudolph S. Pena.)

what the Mexican language would be unless it would be Indian. [72]

Q. Are you acquainted with the defendant Santana? A. I am.

Q. Where did you first see him?

A. First saw the defendant on the 10th floor of the Hall of Justice October 22, 1945.

Q. Was that in connection with your duties?

A. Yes, sir.

Q. Now then, at the time you first talked to the defendant Santana can you tell us who was in the room beside yourself and the defendant?

A. My partner, Sergeant Hokum, was with me and the defendant.

Q. Did you have a conversation with the defendant at that time? A. I did.

Q. Will you tell the jury what was said by yourself and what was said by the defendant to the best of your recollection in that conversation?

Mrs. Root: I understand this is directed as to the defendant Santana only?

Mr. Binns: That is correct.

The Court: And so limited.

Q. (By Mr. Binns) You might also tell the jury in what language the conversation was carried on.

A. The conversation was carried on in Spanish. I [73] introduced myself to Mr. Santana. I asked him if he were Mr. Santana and he answered that he was. I told him that I was a police officer of the city of Los Angeles and I had come to talk

(Testimony of Rudolph S. Pena.)

to him regarding the car and the case, the charge that he was arrested on. He wanted to know what I wanted to know about it.

First I asked him if that car belonged to him and he said that it did; that he had purchased it in San Francisco September 15th and had received the car September 31st. He paid \$400.00 for it from a man by the name of Jose Gonzalez. I asked him if he had driven the car down to Los Angeles and he stated that he had; that he had been here in Los Angeles approximately a week, maybe ten days. He was not sure. I asked him if at any time from the date that he received the car to the date that he was arrested had his car been out of his possession or if he had loaned it to anyone. He stated that he had not loaned it to anyone. However, on one or two occasions another man had ridden in the car with him.

I asked him if that man had been in that car any time alone and he said not to his knowledge; that in all the times when this man was with him he also was in the car.

I asked him if he had driven the car there on that evening and he said that he had. that he had arrived there at approximately 9:30 p.m. and that the officer came shortly before midnight. He did not remember the exact time. [74]

I asked him if he had locked the car. He said that he had not. I asked him if made a habit of leaving his car unlocked and he said "No," that it depended upon where he parked it. If he parked

(Testimony of Rudolph S. Pena.)

it on the street, why, he would lock it. Sometimes he parked in a lot and had to leave the keys in it. I said, "But on this occasion you left it unlocked?" And he said, "Yes, I left it unlocked."

I asked him if he knew anyone who might have left that can of opium in his car and he said he didn't know anybody that would—that handled opium.

I asked him how long he had known Mrs. Gonzalez, who was arrested in his other car, and he stated over a period of two years but that most of his dealings had been with her husband.

I asked him if he meant "dealings in narcotics" and he said "No, I don't mean that." I said, "What kind of dealings do you mean?" And he said he meant farm implements.

That was the extent of the conversation at that particular time.

Q. All right, did you have any further conversation with him? A. Yes, sir; I did.

Q. When was this second conversation?

A. January 15, 1946 at the Federal Narcotic Bureau.

Q. In the Federal Narcotic Bureau? [75]

A. Yes.

Q. Who was present besides yourself and the defendant Santana, if anyone?

A. Inspector Beckner of the State Narcotic Bureau, Sergeant Russell of the City Police, and Inspector Crane and Inspector Carpenter of the Federal Narcotics Bureau.

(Testimony of Rudolph S. Pena.)

Q. And this conversation again took place in Spanish? A. Yes, sir.

Q. Will you tell the jury to the best of your recollection what you said and what the defendant Santana said?

Mrs. Root: May we understand this is directed against Santana only?

The Court: Yes, it is only considered as evidence against Santana and in no wise is to be considered as evidence against the other defendant.

The Witness: At this time I greeted him and he said, "Well, what is this?" He says, "I see they have arrested me again," and I said, "That is right." I said, "You have been indicted by a Federal Grand Jury and you are going to be prosecuted in the Federal Court." He said—I asked him, "Is there anything you wish to add other than what you told me the time before when we had our previous conversation?" And he said, "No, I don't know of anything." I said, "Well, tell me how long you had known this lady prior to the date you were arrested?" And he said, "For two years." I said, [76] "Did you know anything about this opium found in your other car?" And he said, "Well, I don't know except that I have always known she was mixed up in some sort of thing like that," and I said, "What do you mean by that?" and he said, "Everybody knows it down there on the border." He says, "It is common knowledge," and I said "Common knowledge of what?" "That she is an opium smuggler." I said, "Do you know that from

(Testimony of Rudolph S. Pena.)

your own knowledge or is it something you have heard?" He said, "Why, everybody knows it." He said, "I thought you fellows knew that." I said, "We don't. I am asking you now. Did you know she had this opium in the other car?" And he said, "No, I didn't know anything about that." At that time I asked him again if he wished to make any statement regarding the can that was found in his car on the evening of his arrest and he said he didn't know anything about it and that was the substance of that conversation.

Q. (By Mr. Bins) Did you have any other conversations with him?

A. I did not; no, sir.

The Court: I want to specifically instruct the jury at this time that this testimony is only to be considered as evidence against the defendant Santana and is not to be considered by the jury in any manner as any evidence tending to prove any of the issues in this case as to the defendant Josephine Gonzalez. [77]

Mr. Binns: That is all. You may cross examine.

Cross Examination

By Mr. Mandel:

Q. Mr. Pena, in your conversation with the defendant on October 22nd you asked him about the Dodge car, did you not? A. Yes, sir.

Q. And he stated it was his car when you questioned him about the ownership of the car?

A. That is correct.

(Testimony of Rudolph S. Pena.)

Q. Then he told you he had purchased the car in September of 1945 from some man by the name of Gonzalez in San Francisco?

A. That is correct.

Q. And then you asked him about the price of the car, did you not? A. I did.

Q. And you say now as you said before, it was \$400.00 that he told you he paid for the car?

A. That is the statement he made to me.

Q. As a matter of fact, didn't he tell you the car was paid for—the amount of the car was the sum of \$1,400.00? A. He said \$400.00.

Q. Did you find out whether it was \$400.00 or [78] \$1,400.00 he paid for the car?

A. I did not.

Q. I don't want to question your Spanish, Officer, but you are sure you are correct about that amount?

A. Yes, because I made the comment—I said, "That is awfully cheap for a car of that year." He said, "Well, the car is in very poor condition."

Q. As a matter of fact, you are mistaken about the amount he told you he paid for it, isn't that true?

A. No. As far as I recollect he said \$400.00.

Q. You did not take down in shorthand notes the conversation? A. I did not.

Q. Your recollection is that he told you \$400.00 rather than \$1,400.00?

A. He said \$400.00.

Q. That was a 1941 Dodge car?

(Testimony of Rudolph S. Pena.)

A. I know that. That is why I commented. I asked him how it happened he only paid \$400.00 and he said it was in very poor condition.

Q. Now then, you talked to him some 12 days subsequent to his arrest and he was in the County Jail?

A. That is correct.

Q. And that was in connection with the State case?

A. Yes, sir. [79]

Q. Involves the same thing that is involved here?

A. Yes, sir.

Q. All right. Now then, when you asked him about——

The Court: Counsel, when you say “the same thing as is involved here,” I think that should be corrected. It is a different offense entirely.

Mr. Mandel: I meant the same opium—the same opium that is involved in this particular case is the same opium that is involved in the other case.

The Witness: That is correct.

Q. (By Mr. Mandel) Now then, when you talked with him about the facts of this case he told you he had ridden with some other individual, when you asked him about, if somebody else had access to the automobile?

A. Yes, sir. He said on two occasions another party had ridden in the car with him.

Q. I will ask you whether or not he told you he had gone to a moving picture theatre prior to his arrest, either one or two days prior to his arrest, when the car was used by—I don’t remember his name.

A. He did not make the statement to me.

(Testimony of Rudolph S. Pena.)

Q. He didn't? A. No, sir.

Q. Was his name—was the name "Luis" ever mentioned to you? [80]

A. Not to me.

Q. Did you ask him who the individual was or individuals were that were riding in the car?

A. I did.

Q. What did he say?

A. He said he didn't know his name; that he had met him on a previous visit to Los Angeles.

Q. Did he say he was Spanish or otherwise?

A. Did he say the other party was Spanish?

Q. Yes. A. Yes.

Q. Did he say that he was related to either Mr. or Mrs. Gonzalez? A. He did not say.

Q. You questioned him about the car being locked and you asked him particularly whether it was his habit of locking the car?

A. That is right.

Q. And he gave you an explanation that on occasions, depending where he was, he would lock the car or otherwise, is that right?

A. That is true.

Q. You particularly stressed the fact as to whether he locked it on this particular occasion?

A. I did. [81]

Q. And his answer was what?

A. That he did not.

Q. You questioned him also about the contents of this can of opium, did you not?

A. I did.

Q. What did he say about that?

(Testimony of Rudolph S. Pena.)

A. He said he didn't know anything about it.

Q. All right. And he told you when he got possession of the car, did he not? A. He did.

Q. And did he say with whom he came down from San Francisco when he purchased the car?

A. He didn't say. He said he had driven the car down.

Q. All the way down?

A. To Los Angeles, yes, sir.

Q. And was anything mentioned about the Plymouth car?

A. I asked him if it was his car and he said it was.

Q. Did he say what understanding he had about the Plymouth car going to Mexico?

A. He said he loaned it to Mrs. Gonzalez who had wrecked her personal car.

Q. That was when he was up in San Francisco?

A. That is true. [82]

Q. And he gave the keys to her husband or sent them to the hospital, is that right?

A. He didn't say how she had gained possession of the car. He said he loaned it to her.

Q. Then the car was used, the Plymouth car was used in Los Angeles while he was in San Francisco, is that correct?

A. He didn't say where it was used. He didn't say that he knew where the car had gone. All he knew was Mrs. Gonzalez had borrowed his car. That was the Plymouth.

Q. And was there any conversation about what

(Testimony of Rudolph S. Pena.)

disposition there was to be made of the Plymouth car afterwards?

A. Not at the initial conversation. He mentioned something about it January 15th.

Q. What did he say on January 15th?

A. That she was to have delivered the car to his wife.

Q. What happened? What did he say about that?

A. Only that she was supposed to have taken the car to his wife in Mexico.

Q. And did he tell you that she did not bring the car to his wife in Mexico?

A. No. It was quite obvious she didn't.

Q. Quite obvious, but you, of course, don't know what transpired? A. No. [83]

Q. As far as Mrs. Gonzalez was concerned, but in any event the car was not delivered there, is that right?

A. To the best of my knowledge, no.

Q. And you don't know whether Mrs. Gonzalez went to Mexico, however, whether by machine or otherwise, do you?

A. I have no knowledge of that, no.

Q. I mean did he tell you about that in the conversation?

A. No, he did not. The only statement he made was that she was to have delivered the car to his wife in Mexico.

Q. Did he say what else she had to deliver?

A. No.

(Testimony of Rudolph S. Pena.)

Q. Did he mention anything about a ring?

A. No, sir.

Q. And an overcoat?

A. No, he didn't mention it.

Q. "Abrigo" in other words?

A. No, sir.

Q. And didn't he say that she was to deliver that car to his wife in Mexico and he was to get \$100.00 from her for the purpose of purchasing tires for his Dodge car?

A. No, he didn't make those statements to me.

Q. Did he bring that out in his conversation with you at all? [84]

A. No, sir.

Q. He did not?

A. No, sir.

Q. Did Mr. Santana tell you in the conversation or did you ask him, rather, whether or not he had seen Mrs. Gonzalez from the time he was in San Francisco and returned to Los Angeles, up to the time she came back and was arrested?

A. I don't believe that was asked by either me or the defendant.

Q. You didn't go into that at all?

A. No, sir, I did not.

Q. Didn't he explain to you just how the car—something about the possession of the car?

A. Which car?

Q. The Plymouth car?

A. Only that he had loaned the car to Mrs. Gonzalez.

Q. And he didn't discuss with you as to what

(Testimony of Rudolph S. Pena.)

happened afterwards, after he loaned the car to Mrs. Gonzalez? A. He did not.

Q. You never discussed this matter with Mrs. Gonzalez in his presence or otherwise, did you?

A. I have never spoken to the lady.

Q. Did you ask him how he happened to be in the trailer at Mrs. Gonzalez' place?

A. Yes, sir; I did. [85]

Q. What did he say?

A. He said he obtained permission from her to sleep in her trailer—that he had spent a couple of nights there.

Q. From her or Mr. Gonzalez?

A. From Mrs. Gonzalez.

Q. When? A. In San Francisco.

Q. In San Francisco? You mean some time in September?

A. Some time before he came down here, yes.

Q. Did he tell you how he happened to come to Los Angeles or happened to come to this state from Mexico?

A. Yes, he mentioned something about it.

Q. What did he say?

A. That he came up to buy some farm implements.

Q. Did he tell you he came for the purpose of buying a Dodge car?

A. He said he did buy a car.

Q. Did he tell you that he came here for that specific purpose?

(Testimony of Rudolph S. Pena.)

A. I don't recall his having made that statement.

Q. Didn't he tell you he came with Mr. Gonzalez, the husband of Mrs. Gonzalez, in Calexico, and went with him for the purpose of buying a car from Mr. Gonzalez' brother in Los Angeles, and when he arrived in Los Angeles it occurred [86] that Mr. Gonzalez' brother had returned to San Francisco? Didn't he tell you that?

A. No, he did not.

Q. Didn't he tell you that and Mr. Gonzalez had left for San Francisco when Mr. Gonzalez and Mr. Santana had arrived in Los Angeles in his Plymouth car? Did he tell you that?

A. He did not go into that part of buying the automobile.

Q. You did not question him about that at all?

A. No, I did not.

Q. Did he tell you that he had purchased on other occasions farming equipment from Mr. Gonzalez? A. That is right.

Q. Did he tell you he bought two Caterpillar tractors and a truck—GMC truck from him?

A. He enumerated a few articles. I don't recall exactly what they were.

Q. And that was the specific mission for which he came to Los Angeles?

A. That is what he told me.

Q. Or California? A. Yes, sir.

Q. And he stated, did he not, to you in the conversation that he left Mexicala some time in Sep-

(Testimony of Rudolph S. Pena.)

tember, the 5th or [87] 6th of September of last year, is that correct?

A. He said the early part of September. He didn't give any dates.

Q. And arrived in Los Angeles from there and went up to San Francisco? A. That is true.

Q. You ascertained he went up there and purchased the car in San Francisco, is that correct?

A. That is the statement he made to me.

Q. Well, did you ascertain whether that was true or not? A. No, I did not.

Q. As far as you know then, that is, from the statement the defendant made to you—you have no reason to doubt that is the truth, have you?

The Court: That is argumentative.

Mr. Mandel: That is argumentative, yes, your Honor.

Q. In any event, you have not checked to determine the truth of it? A. No.

The Court: All you are testifying to is what he told you?

The Witness: That is true.

Q. By Mr. Mandel: Now, was there any further conversation with the defendant that you have not testified to? [88]

A. There was one little bit of conversation regarding one time that he was allegedly shot at at the border, which I brought out and asked him if it wasn't true—that at one time when he was being searched at the border he tried to get away and one of the custom agents had shot him.

(Testimony of Rudolph S. Pena.)

Mr. Mandel: I ask that be stricken.

The Court: You asked for the conversation, counsel. You invited it.

The Witness: And he said that—no, that wasn't the way it was—that somebody else shot him. It wasn't the custom agent.

Q. By Mr. Mandel: That man has never been arrested before in his life, has he?

A. Not to my knowledge.

Q. Neither here nor in Mexico? Isn't that correct?

A. I don't know whether he has been in Mexico or not.

Q. But in the United States you ascertained that he has not been arrested before?

A. That is my knowledge, yes.

Q. Now, did you have occasion to talk to Mr. Gonzalez at all during this time?

A. Talk to whom?

Q. Mr. Gonzalez?

A. I don't know Mr. Gonzalez.

Q. You never talked to Mrs. Santana in reference to this [89] case, did you?

A. I have not.

Q. When you talked to Mr. Santana on the 15th of January in connection with this particular arrest, that was after the indictment by the Federal Grand Jury, is that correct?

A. That is true.

Q. When you had the second conversation?

A. Yes, sir.

Q. And that was in the Spanish language as you have stated?

A. It was.

31 Josephine Gonzales vs.
(Testimony of Rudolph S. Pena.)

Q. You stated at that time he added one other matter that was not discussed in the first conversation and that was that he stated, or, he volunteered the statement that he knew that Mrs. Gonzalez was mixed up in opium—I mean with drugs—is that what you testified to?

A. Yes, he made that remark.

Q. Did he tell you that he had heard that in the County Jail?

A. He said he had heard it at the border and he said it was common knowledge as far as he was concerned—everybody knew it.

Q. As a matter of fact, didn't he tell you he just ascertained it in the County Jail? [90]

A. No, he didn't make that statement.

Q. In all other respects the testimony was the same as the conversation on October 22nd?

A. Yes, it was.

Q. Do you know anyone by the name of Francisco Julio Sanford?

A. Not personally, no.

Q. You have heard of him? A. I have.

Mr. Mandel: That is all.

Mr. Binns: No further questions.

Mrs. Root: No questions.

Mr. Binns: May this officer be excused?

Mrs. Root: As far as we are concerned, he may be.

Mr. Mandel: Yes.

Mr. Binns: Call Officer Russell.

DAVID A. RUSSELL

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: David A. Russell.

Direct Examination

By Mr. Binns:

Q. Where do you live, Mr. Russell?

A. Los Angeles, California. [91]

Q. How long have you lived here?

A. About 25 years.

Q. Where are you employed?

A. Los Angeles Police Department, Narcotics Division.

Q. How long have you been so employed?

A. A year and a half in the Narcotics Division and 7 years on the Police Department.

Q. Were you present with Agent Beckner on the evening of October 9th? A. I was.

Q. Were you out at the trailer camp on that evening? A. I was.

Q. Were you in the car which followed Mrs. Gonzalez' car? A. I was.

Q. Drawing your attention to this suitcase, which is Government's Exhibit 2, did you see that suitcase on that occasion? A. Yes, I did.

Q. Were you present when that suitcase was opened? A. I was.

The Court: Counsel, may I suggest—

(Testimony of David A. Russell.)

Mr. Binns: I am not going through the entire story.

The Court: If those facts are disputed you can call this witness in rebuttal. Let us not go over the same thing [92] until we find out there is a dispute.

Mr. Binns: All right, your Honor.

The Court: As I understand from the opening statements, each defendant accuses the other and excuses himself. That seems to be the issue.

Q. By Mr. Binns: I draw your attention to Government's Exhibit 5 as it sits before you. It is in a box. Have you ever seen that box before?

A. Yes, I have.

Q. Where was that box when you saw it before?

A. On the evening of October 9th, 1945, it was contained within that suitcase.

Q. And were the cans in that box?

A. They were.

Q. And did you personally count the cans in that box? A. I did.

Q. How many were there? A. 16.

The Court: From your experience on the Narcotic Detail, do you have any knowledge as to the value of the opium in those cans?

The Witness: Well, only by hearsay. It depends upon the location where it is sold. All the way from \$250.00 to \$400.00 a can.

Mr. Binns: No further questions, your Honor.

Mr. Mandel: No questions.

Mrs. Root: No questions.

Mr. Binns: Agent Polcuch.

OSCAR W. POLCUCH

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Oscar W. Polcuch.

Direct Examination

By Mr. Binns:

Q. Where are you employed, Mr. Polcuch?

A. Treasury Department, Bureau of Narcotics.

Q. You are stationed in this building?

A. Yes, sir.

Q. I draw your attention to Government's Exhibit 5, which sits before you. Have you ever seen that before? A. Yes, sir.

Q. And where did you see it?

A. Inspector Beckner turned that evidence over to me on January 18th.

A. I initialed it for identification, sealed it, and sent it via registered mail to the Government chemist at San Francisco. [94]

Q. I show you an envelope marked Government's Exhibit 7 and ask you to examine the can in that envelope and tell us if you have ever seen that before? A. Yes, sir.

Q. Did you do the same thing with that can?

A. I did.

Q. Now then, if you will examine Government's Exhibit 5 you will notice there is a jar in there.

A. Yes, sir.

(Testimony of Oscar W. Polcuch.)

Q. Have you ever seen that jar before?

A. I did.

Q. Will you take it out, please? Can you tell us where you have seen that jar before?

A. This exhibit, which consisted originally of 16 cans, I removed one of those cans and emptied the opium content of it into that jar and then I sent the empty can to the customs chemist in Baltimore, Maryland, for a metallurgical examination.

Q. At the time you first saw that there were 16 cans in it? A. Yes, sir.

Q. Now then, in your experience in the opium traffic are you acquainted with the price at which opium is at the present time being sold?

A. Yes, sir. [95]

Q. Can you tell us what the value of one of those cans is in Los Angeles at the present time?

A. From \$200.00 to \$250.00. That is, if it is purchased in quantities.

Q. And is that in this area? A. Yes, sir. tion.

Q. Will you tell us what the price of one of those cans would be down below the Mexican border?

A. From information which I received it would be from \$75.00 to perhaps \$100.00.

Q. Were you formerly stationed in the San Francisco area? A. Yes, sir.

Q. Can you tell us what the price of one of those cans is there?

The Court: That is getting out of our jurisdiction.

(Testimony of Oscar W. Poleuch.)

Mr. Binns: Just wanted to show he is a well informed man, your Honor.

Q. Are you acquainted with the defendant Mrs. Gonzalez? A. Yes, sir.

Q. Where did you first meet her?

A. In the County Jail at Los Angeles. I believe the first time was on January 18th. I am not quite certain. It was on or about the 18th of January.

Q. And in the County Jail? A. Yes, sir.

Q. And did you have a conversation with her at that time?

A. I did. I went up alone and asked her if she cared to make any statement in connection with this case and she told me at that time that she wanted to make a clean breast of everything and she said she would tell me everything she knew about it.

I did not take a statement from her at that time. I told her that I would be back in a few days and on January 22nd Inspector Beckner, Agent Craig and I went up to the County Jail and interviewed her in connection with this matter.

Q. Who is Agent Craig?

A. He is a Narcotic Agent in charge of the Bureau of Narcotics in Los Angeles.

Q. He is your boss? A. Yes, sir.

Q. All right. Now then, you had a conversation with her, you say, in your office here?

A. Not our office here, no.

Q. Where was that conversation?

A. It was in the County Jail.

(Testimony of Oscar W. Polcuch.)

who was then occupying the trailer, and he told her to leave this Plymouth in Brawley, on the east side of town, and to write a postcard, addressing it to a box number in Calexico, which he stated was the address of Santana's wife, and that she would pick up the car.

She then stated that she proceeded to Brawley. Upon arriving there she placed her daughter in school and she had intended to leave the car in Brawley. However, there was a bus strike on and she couldn't obtain any bus transportation back to Los Angeles, so she decided to drive back in Mr. Santana's car. That she arrived in Los Angeles about two o'clock on October 9th. She drove directly to her trailer and she entered it and there was no one there. She observed a man's—a man's clothing hanging in there and she stated she remained there, waiting for Mr. Santana.

She stated she waited until about 8:30 or so that night and as he did not return she decided to spend the night with her daughter or daughter-in-law, I don't remember just which. She stated she took this suitcase and some personal clothing and put them in the car and drove to this relative's house. She arrived—it was, I believe, in La Canada. She arrived there about nine o'clock and that was when she was placed under arrest. [100]

I asked her if she had taken that suitcase with her to Brawley and she said "No", that she had left it in the trailer and that as far as she knew that suitcase still contained the tools she had re-

(Testimony of Oscar W. Polcuch.)

moved from her own personal automobile. And she further said that she had left the keys to the suitcase and to the trailer in the trailer for Mr. Santana's use.

I then asked her if it wasn't unusual for her to carry a suitcase of tools to her relative's house, if all she intended doing was spending one night there. She replied that it seemed strange but that is what she did. So, she took the suitcase with her and was arrested that night in possession of opium, which was contained in there. She stated further she did not examine the suitcase after she returned from Brawley.

Q. By Mr. Binns: Is that all you recall at this time?

A. She also stated that she knew nothing about the opium in that suitcase; she had had no traffic in any narcotics and that she knew of no one that did. She stated she had known Mr. Santana for over a period of two years and that as far as she knew he had always been engaged in the sale of farming implements, purchasing them here in the United States and selling them in Mexico.

That was about the substance of our conversation.

Mr. Binns: You may cross-examine. [101]

Cross-Examination

By Mrs. Root:

Q. Did she make any statement to you about having gone to the cleaners in the afternoon of October 9th? A. Yes, she did.

(Testimony of Oscar W. Polcuch.)

Q. And tell us about that, please?

A. She stated that while she was waiting at the trailer for Mr. Santana to return that she had taken some clothing to the cleaners and then she had also gone to a drug store nearby to have lunch.

Q. And did she state to you as to the hour of the day that she had done those things?

A. No. She stated that she had returned to the trailer from Brawley at about two o'clock and it was after that time that she had gone to the cleaners and then to the drug store for lunch.

Q. And did she also ask you or make a suggestion that if the officer cared to check that fact they could find the ticket where she had left the cleaning there?

A. I don't recall that.

Q. In other words, you do not recall hearing her say anything about the ticket that she then had in her possession showing the leaving of certain clothing at the cleaners?

A. No, I don't.

Q. You did not take any of this down in writing, did [102] you, Officer?

A. I did. I jotted down the notes as she related her story.

Q. In other words, a synopsis, as one would do?

A. Yes, sir.

Q. In a conversation but not word for word?

A. No.

Q. And you told us that the narration started with about a half hour of her talking before she got down to the point at issue, and was that about

(Testimony of Oscar W. Polcuch.)

the fact that she had resided as a farmer in Imperial Valley?

A. That and also that her farming activities and the purchasing of farming implements and going into the family background and so on, a story which is irrelevant to this.

Q. She made the suggestion to you, did she not, Officer, that if you cared to check her background and living habits as a farmer and the raising of vegetables and the mother of children you could check with the various law enforcement agencies of Brawley, is that right?

A. I don't recall whether she made that suggestion or not. She may have.

Mrs. Root: That is all, thank you.

Q. By Mr. Mandel: Just a couple of questions, Inspector Polcuch. In the conversation that you had with Mrs. Gonzalez, after rambling on you say for some time, she finally stated [103] that she met Santana for the first time in San Francisco some time in 1943?

A. No. She stated with reference to the month of September, 1945, that when she and her husband had gone to San Francisco for a vacation that they had met Santana there.

Q. In September, 1945, they met Santana in San Francisco?

A. Yes; but that was not the first time that they had met. She stated that she had first met Santana some time in 1943 as I recall.

Q. That is what I am getting at.

A. Yes.

(Testimony of Osear W. Polench.)

Q. Before I get to that, however, you mentioned something about—you say that they met Mr. Santana, according to the conversation, you say you had with Mrs. Gonzalez, that Mr. Gonzalez and Mrs. Gonzalez met Mr. Santana in San Francisco by chance. Is that what she told you?

A. Yes; that was right around Labor Day of 1945.

Q. And that is what she told you in the conversation about how they met in San Francisco?

A. Yes, sir.

Q. And in 1943 she said she met Santana for the first time. Where did she say she met him?

A. As I recall, it was in Westmoreland. I am not certain. Wherever their farm is. [104]

Q. I misunderstood you. I thought you said in 1943 in San Francisco she met him. A. No.

Q. I am in error on that point. Did she tell you that—pardon me. Did she tell you when she arrived in Los Angeles from Westmoreland, before she was arrested?

A. As I recall, it was on the 9th. It was on the 9th of October between two and three o'clock in the afternoon.

Q. About two or three o'clock in the afternoon October 9th? A. Yes.

Q. And she had been in Los Angeles before that?

A. No. She stated she went—she came directly to the trailer from Brawley.

(Testimony of Q.)

Q. Did she say
at that time?

A. No. She said
the trailer during her
back.

Q. Did she say when

A. It was on the night

Q. At what time did she

A. Right around 8:30—
trailer to visit her relative.

Q. And where was the su the trailer?
Was it in the trailer itself? [105]

A. That is right.

Q. And was Mr. Santana there at the time, did
she say? A. She said he was not there.

Q. That was about 8:30 in the evening?

A. Yes, sir.

Q. Now, when she said she went to Mexicali to
to see Mrs. Santana, did she tell you that she took
anything along with her other than the car?

A. She didn't say she had gone to Mexicali to
meet Mrs. Santana.

Q. Did she tell you that Mr. Santana had di-
rected her to leave the car with his wife in Mexi-
cali? A. No, that is not what she told me.

Q. She never told you that? A. No.

Q. Did she tell you anything about the delivery
of a ring and an overcoat that Mr. Santana had
given her husband or her to deliver to his wife in
Mexicali? A. No, she didn't mention that.

Q. Did not mention that to you? A. No.

108
(Testimony of Q.)
Did she say that she
you to previous

(Testimony of Oscar W. Polcuch.)

Q. Before I get to that, however, you mentioned something about—you say that they met Mr. Santana, according to the conversation, you say you had with Mrs. Gonzalez, that Mr. Gonzalez and Mrs. Gonzalez met Mr. Santana in San Francisco by chance. Is that what she told you?

A. Yes; that was right around Labor Day of 1945.

Q. And that is what she told you in the conversation about how they met in San Francisco?

A. Yes, sir.

Q. And in 1943 she said she met Santana for the first time. Where did she say she met him?

A. As I recall, it was in Westmoreland. I am not certain. Wherever their farm is. [104]

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A. As I recall, it was on the 9th. It was on the 9th of October between two and three o'clock in the afternoon.

Q. About two or three o'clock in the afternoon October 9th? A. Yes.

Q. And she had been in Los Angeles before that?

A. No. She stated she went—she came directly to the trailer from Brawley.

(Testimony of Oscar W. Polcuch.)

Q. Did she say she had the suitcase in the car at that time?

A. No. She said the suitcase had remained in the trailer during her entire trip to Brawley and back.

Q. Did she say when she picked up the suitcase?

A. It was on the night of October 9th.

Q. At what time did she say she picked it up?

A. Right around 8:30—at the time she left the trailer to visit her relative.

Q. And where was the suitcase in the trailer? Was it in the trailer itself? [105]

A. That is right.

Q. And was Mr. Santana there at the time, did she say? A. She said he was not there.

Q. That was about 8:30 in the evening?

A. Yes, sir.

Q. Now, when she said she went to Mexicali to to see Mrs. Santana, did she tell you that she took anything along with her other than the car?

A. She didn't say she had gone to Mexicali to meet Mrs. Santana.

Q. Did she tell you that Mr. Santana had directed her to leave the car with his wife in Mexicali? A. No, that is not what she told me.

Q. She never told you that? A. No.

Q. Did she tell you anything about the delivery of a ring and an overcoat that Mr. Santana had given her husband or her to deliver to his wife in Mexicali? A. No, she didn't mention that.

Q. Did not mention that to you? A. No.

(Testimony of Oscar W. Polcuch.)

Q. Did she mention anything about the fact that she didn't tell you—I take it she did not tell you that he and Mrs. Gonzalez and Mr. Gonzalez went up to San Francisco when Mr. Jose Gonzalez was not in Los Angeles—didn't tell you about that, did she? [106]

A. No. As I recall her story, she and her husband had gone up to San Francisco and it was by chance that they met Mr. Santana there.

Q. Did she say where she had met him?

A. With reference to San Francisco?

Q. That is right.

A. I believe it was at a dry cleaning place operated by Jose Gonzalez, the defendant's brother-in-law, defendant Gonzalez' brother-in-law.

Q. You of course independently do not know whether this car, this Plymouth car that Mrs. Gonzalez was in, came to Los Angeles?

A. I don't know of my own knowledge, no.

Q. You don't know when it was under surveillance? A. No.

Q. You never had a conversation with this defendant, did you?

A. I arrested him on January 15th, and it was then that I found out that he knew very little English. He appeared to understand a little but that was about all.

Q. Not sufficiently to carry on a conversation?

A. (No answer.)

Q. You had not seen him—you did not know the man before this time, before the 15th of January?

(Testimony of Oscar W. Polcuch.)

A. No, I didn't. [107]

Q. And you were not present at any previous occurrence in October? A. No.

Q. Did she tell you that—Mrs. Gonzalez I am speaking of now, that when Mr. Santana was in San Francisco that she had left with her Chevrolet car—that she had a Chevrolet car. Did she tell you that?

A. She stated she had left in her own Chevrolet car for Los Angeles.

Q. Did she tell you she met with an accident and asked her husband to ask Mr. Santana for the keys to the Plymouth car which was in Los Angeles?

A. I don't recall that.

Q. Or did she tell you this—did she tell you that Mr. Gonzalez and Mr. Santana came from the Imperial Valley up to Los Angeles?

A. No. She stated that after the accident her husband and Mr. Santana came from San Francisco to Los Angeles, as I recall her story.

Q. But she never at any time told you, as far as you can recall, that her husband and Mr. Santana left the Valley for Los Angeles?

A. Would you repeat the question?

(Question read.)

A. No, not that I recall. [108]

Q. Did she at any time tell you that Mr. Santana talked with her husband for the express purpose of buying a car?

A. No, sir, I don't recall that.

Q. Didn't tell you that?

(Testimony of Oscar W. Polcuch.)

A. (No answer.)

Q. There was never a conversation in the Spanish language in the presence of both defendants, was there? A. Not to my knowledge.

Q. Statements of one were never brought to the attention of the other at any time, was there?

A. Not as far as I know.

Q. Never confronted each other with reference to any statements that were made?

A. Not in my presence.

Q. And you personally not having talked with him in Spanish you never did get his statement?

The Court: Counsel, he has answered that question several times.

Mr. Mandel: I think he may have, yes, your Honor.

The Court: There is no use in going over it again.

Mr. Mandel: Very well. I am going to try to expedite this. I think that is all. Thank you very much.

Mr. Binns: No further questions.

I have some photos here, your Honor, and counsel have [109] agreed to stipulate that these photos are photographs of the back of the Dodge car driven by the defendant Santana and the other four photos are of the glove compartment of that car.

Mrs. Root: So stipulated.

Mr. Mandel: Yes.

Mr. Binns: Then they may be marked Government's next in order.

The Court: Each one separately and pass them to the jury.

(The photographs referred to were marked as Plaintiff's Exhibits Nos. 11 to 14, inclusive, and were received in evidence.)

Mr. Binns: That disposes of the Government's case, you Honor. The Government rests at this time.

Mrs. Root: There will be an objection to the introduction of the cans of opium in evidence, based on the original objection that there was not a search warrant that therefore it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mrs. Root: May the record denote an exception taken, please?

The Court: Yes.

Mr. Mandel: May I discuss the matter outside the presence of the jury, your Honor? [110]

The Court: Yes; there are some preliminary matters that must be taken up in the absence of the jury. It is almost time for the afternoon recess, so at this time the jury will be excused to retire to the jury room until recalled. In doing so, you will remember the admonition previously given you by the court.

(Whereupon, the jury retired and the following proceedings were had without the presence of the jury:)

The Court: You may proceed. Let it appear the jury is now absent.

Mr. Mandel: If it please your Honor, I realize that the gist of a conspiracy as was stated in United States vs. Falconi and other cases, the gist of the conspiracy is an agreement among the conspirators to commit an offense——

The Court: Counsel, just a moment. Will you please make your motion?

I would first like to ask counsel for the Government why they are insisting upon a conspiracy count. These defendants or either of them, either had the opium in their possession or they didn't have it.

Without the conspiracy count there is sufficient evidence here in my opinion, to let it go to the jury.

These two people were in close contact with one another and there was opium in similar cans in both cars. The opium, according to the testimony, had the appearance of having a [111] common source. That is an inference that the jury could draw from the evidence and for that reason I do not see why the jury should be confused with a conspiracy count. The instruction on a conspiracy count is a long one and by the time it is finished the jury will be in a state of confusion. In this case you have opium which was found in the possession of each of the defendants—at least it was found in cars operated by each defendant, which certainly is sufficient, if the jury wants to so find, to find the defendants guilty.

If they find only one defendant guilty then there is no conspiracy. If they find one party had nothing

United States of America
do with it then there isn't any conspiracy because
the party cannot be guilty of conspiracy.

I am wondering what the Government's theory
is on that.

Mr. Binns: Well, your Honor, of course, I am
not going to bother your Honor with my position
in the office. You know that I am simply sent down
here to try a case.

The Court: In any event, I am not going to rule
upon that question until the case is in; but I will
consider Mr. Mandel as having a motion for an
instructed verdict on the conspiracy count and the
motion will be denied and an exception noted.

Mrs. Root: Will that be as to both defendants?

The Court: And I will consider the motion was
made by counsel for both defendants. But I do
wish counsel for the [112] Government would give
some consideration to my suggestion.

Mr. Binns: I understand the court's position
and I will consider it.

The Court: In the first place, there has been no
offense here unless the defendants had possession
of the opium because everything deals with possession.

Mr. Binns: That is correct.

The Court: And if the jury found them guilty
on the first two counts and also found them guilty
on the third count, which carries a much less penalty
than the other two counts, the court would not im-
pose any heavier penalty by reason of the third
count than if there was only one count. And from
practical point of view the conspiracy count

simply confuses the issue before the jury and would make it look complicated when, as a matter of fact, it is very simple. It is just a matter of fact as to whether or not these defendants, and the jury so finds beyond a reasonable doubt, had opium in their possession, or either one of them. The evidence here is that both parties were found with opium in their possession.

Mr. Binns: I realize it is a complicated instruction, your Honor, because I had to spend about as much time drawing the one conspiracy count as I did the other two.

The Court: We will take a recess at this time for ten minutes. [113]

(Short recess.)

The Court: Do you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: Yes, your Honor.

The Court: You may proceed.

Mr. Mandel: Mrs. Santana, will you take the stand? We will need an interpreter.

(Whereupon, Armida Lopez was duly sworn as interpreter from Spanish into English and from English into Spanish.)

MARIA del REFUGIO SANTANA,

called as a witness by and on behalf of the defendants, having been previously duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Maria del Refugio Santana.

Direct Examination

By Mr. Mandel:

Q. State your name, please.

A. Maria del Refugio Santana.

Q. Mrs. Santana, you are the wife of Jesus Santana who is seated at my left?

A. Yes, sir.

Q. And you and your husband reside in Mexicali, do you? [114]

A. Yes.

Q. And do you know Mrs. Gonzalez?

A. Just recently I have met her.

Q. When did you see her?

A. 8th of October.

Q. Where did you see her?

A. In my home.

Q. At your home? And did you have any prior notification of the fact that she was coming to your home?

A. No, I didn't.

Q. And was there a conversation that you had with her then?

A. Yes. She told me that my husband was sending the car.

Q. And that is what car?

A. Plymouth.

(Testimony of Maria del Refugio Santana.)

Q. And did you see the Plymouth car?

A. No, I didn't see it.

Q. Do you remember when your husband left Mexicala?

A. Around the first of September.

Q. And was it stated what he was going—why he was leaving Mexicala?

A. He was coming to buy a car.

Q. Did you know that? A. Yes. [115]

Q. What type of business is your husband in?

A. In the ranch.

Q. What does it consist of?

A. Agricultural business and buying implements.

Q. How much do you have under cultivation?

A. 200 acres.

Q. And your husband has this under cultivation?

A. Yes.

Q. And what else does he do besides the cultivation of crops that he has down there?

A. Buying and selling implements of agriculture.

Q. Farm implements? A. Yes.

Q. Do you own the land or do you rent it?

A. We rent it.

Q. Do you have a lease on it?

The Court: What materiality has that, counsel?

Q. (By Mr. Mandel) Now, then, did you know Mr. Gonzalez before October of last year?

A. No.

Q. Now, you never met Mrs. Gonzalez before the 8th of October of last year?

(Testimony of Maria del Refugio Santana.)

The Court: She has answered that, counsel.

Q. (By Mr. Mandel) You have not seen her since that time? [116] A. Yes.

A. No, not until October when she went to my home.

Q. Did you have a conversation with her at that time?

A. She told me that my husband was sending the car and she couldn't leave the car because she was ill and she said that she would bring the car back the following day.

Q. Said she would bring the car back the following day? Did you ever see her the following day?

A. No, she didn't come back after that day.

Q. Did you understand that the car had been in Mexicala?

The Court: Just a moment. Not what she understood.

Q. (By Mr. Mandel) Did you know of your own knowledge that the Plymouth car was brought by Mrs. Gonzalez to Mexicala?

A. Yes. Various people told me that they had seen her cross the line and she had the car.

Mrs. Root: I move that go out.

Mr. Mandel: I move that be stricken.

The Court: Yes. You did not see the Plymouth car?

The Witness: No.

Q. (By Mr. Mandel) She came to see you on foot, is that it?

A. Yes; I believe she went to my house in a taxi.

(Testimony of Maria del Refugio Santana.)

Q. But she told you that she was coming to bring the Plymouth the next day? [117]

A. Yes; she would bring it to me the next day without fail. She was ill that day and would not leave it.

Q. All right. Do you know whether or not she was to have brought you a ring and an overcoat?

Mrs. Root: Object to that on the ground it is immaterial.

The Court: I do not see what materiality it has, counsel: I don't think very much of this testimony is material, counsel. You had better not go too far afield or I will have to stop it myself.

Q. (By Mr. Mandel) Did you receive a card from your husband explaining the fact that Mrs. Gonzalez was delivering the automobile to you?

A. No.

Q. Did you get a request for \$100.00—that is, a request from your husband that you get \$100.00 for him for the purchase of some tires?

The Court: Counsel, what materiality is that?

Mr. Mandel: Well, it is a part of the picture.

The Court: I do not know that it is. The question here in this case is whether or not this defendant had anything to do with the opium and that question does not tend to prove or disprove that issue.

Mr. Mandel: But it is all part of the conversation, if your Honor please. We are not trying to implicate the [118] co-defendant; we are trying to clear our client.

(Testimony of Maria del Refugio Santana.)

The Court: I know what you are trying to do and that is your responsibility, but whether they talked about tires or anything else of that nature is not material. We are only interested in one point here and that is who did this opium belong to and who brought it into California and who was handling it.

Q. (By Mr. Mandel) You had this Plymouth car in Mexicala before your husband left for the Valley, is that correct?

A.- He left in the Plymouth car.

Q. In other words, you had it before October—he had it before September 1st, 1945?

A. Yes, sir.

Q. You remained in Mexicala while he left for the Valley? A. Yes.

Q. How long has your husband been engaged in the agricultural business?

A. In that location he has been about four years.

Q. And how long in the general area of Mexicala? A. Nine years.

Mr. Mandel: That is all. [119]

Cross Examination

By Mrs. Root:

Q. Mrs. Santana, you reside in Mexico, do you not? A. Yes, Mexicala.

Q. And that is, of course, your residence with your husband, the defendant in this action, Mr. Santana? A. Yes.

Q. And he left Mexico, that is he, meaning Mr.

(Testimony of Maria del Refugio Santana.)

Santana, left Mexico on this particular occasion about the first part of September in the Plymouth, is that correct? A. Yes.

Q. Now, on the date that you first met Mrs. Gonzalez when was that in regard to October 8th?

A. The 8th of October.

Q. Had you not known her previously to October 8th? A. No.

Mrs. Root: That is all.

Redirect Examination

By Mr. Mandel:

Q. In September of 1945, it could have been the 5th or 6th of September when your husband left? A. About the 5th or 6th.

Q. You are not sure of the date?

The Court: Just a moment, counsel. Do not lead the witness. [120]

Mr. Mandel: That is all.

Mr. Binns: No questions by the Government.

Mrs. Root: Nothing further.

Mr. Mandel: I will put on the defendant, Mr. Santana. We have another witness under subpoena.

The Court: Is the witness you have under subpoena present in the courtroom?

Mr. Mandel: He is being subpoenaed. He is in the County Jail, your Honor.

Mr. Binns: Might I ask if he is held under a Federal charge?

Mr. Mandel: No.

Mr. Binns: If he is we could get him for you.

JESUS SANTANA,

called as a witness in his own behalf, having been first duly sworn, was examined and testified through Armida Lopez, the interpreter heretofore previously duly sworn, as follows:

The Clerk: State your full name.

The Witness: Jesus Santana.

Direct Examination

By Mr. Mandel:

Q. Mr. Santana, do you speak English?

A. Almost nothing. Hardly nothing at all.

Q. Will you please raise your voice? Hold your voice [121] up. You were living in Mexicala, lower California, prior to your arrest in October of last year?

A. Yes.

Q. And you were engaged in what business?

A. In the ranch business, and I buy cars and trucks—Caterpillar tractors.

Q. When did you first become acquainted with Mr. Gonzalez?

A. Approximately two years ago.

Q. Is he in court at this time?

A. Yes, he is back there.

Mr. Mandel: Will you please stand up, Mr. Gonzalez?

Q. Now, did you ever buy any cars from Mr. —or tractors or Caterpillars from Mr. Gonzalez? Prior to October, last October or September?

A. Yes; I bought a truck from him and through him I bought a Caterpillar and another truck.

(Testimony of Jesus Santana.)

Q. He introduced you to someone in Calexico from whom you made your purchases?

A. In Calipatria. We bought them in Calipatria to sell them in Mexicala.

Q. You purchased about two or three times from him, did you?

A. We made three transactions.

Q. One or more of the transactions was by introduction through Mr. Gonzalez, is that it? [122]

A. The Dodge I bought through him from a friend of his. I bought the Dodge from his brother.

Q. And you bought the Caterpillars through him?

A. Yes. He tells me who has a Caterpillar when I want one and I go and buy it.

Q. Now, I will ask you if you had a conversation with Mr. Gonzalez prior to the time that you left for the United States, with reference to the purchase of any automobile or tractor or anything?

A. The Dodge.

Q. What was the conversation?

Mrs. Root: Just a minute. Is that with Mr. Gonzalez?

Mr. Mandel: Yes.

Mrs. Root: I will object to it on the ground it is hearsay to the action as far as I am concerned, and particularly to my client, Mrs. Gonzalez, it is incompetent, irrelevant and immaterial.

Mr. Mandel: If your Honor please, there was a conversation between Mrs. Gonzalez and Officer Polcuch with reference to meeting Mr. Gonzalez by Mr. Santana, by chance in San Francisco. Surely

(Testimony of Jesus Santana.)

the jury is entitled to know what we stated in our opening statement to the jury that the reason why this man came to the United States, and in chronological form as to what happened from the time he had the conversation with Mr. Gonzalez until the time of his arrest. [123]

The Court: I am going to let this man tell his story, but the jury is instructed that any conversations he had without the presence of the defendant Gonzalez is not binding upon her.

Q. By Mr. Mandel: What was the conversation with Mr. Gonzalez just before you came to the United States?

A. The conversation we had was that we were to come to Los Angeles to buy a car and we came to Los Angeles in a little truck and when we arrived in Los Angeles we stayed—I had to take the trailer.

Q. How did you come to Los Angeles? In what vehicle? A. In the Plymouth.

Q. You did not come in the Dodge? You came in your Plymouth? A. Yes.

Q. Then you were supposed to go in Mr. Gonzalez' truck, isn't that correct?

A. Yes, and the truck that he was going to get—he didn't get it; we came in the Plymouth.

Q. You came in your Plymouth. Then what did you do after you went with the Plymouth? Did you pick up Mrs. Gonzalez?

The Court: Just a moment, counsel. I am permitting you to go into matters that I think are im-

121
(Testimony of Jesus Santana.)

material, but this court has always taken the position of permitting a defendant [124] to tell his entire story if it doesn't go too far astray. I want a man to feel when he comes into this court that he has had a full opportunity to tell his story and his full day in court, but I do not want counsel to do the testifying.

Let the witness tell his own story.

Mr. Mandel: All right.

Q. Mr. Santana, how did you leave lower California—who was with you in the car?

A. My sister and brother-in-law and myself.

Q. You mean you came to Los Angeles?

A. No, to Brawley.

Q. Is that where you met Mr. Gonzalez?

A. That is where Mr. Gonzalez was waiting for me.

Q. Who accompanied you to Los Angeles from Brawley? A. Mr. Gonzalez.

Q. And was Mrs. Gonzalez with you at the time?

A. No, she was in Los Angeles.

Q. You and Mr. Gonzalez alone went to Los Angeles?

A. Yes. We arrived here in Los Angeles, the two of us, and went to the trailer and there was Mrs. Gonzalez.

Q. Then what happened there?

A. The next day Mr. Jose Gonzalez—he wasn't here, the one I was supposed to purchase a truck from, so the next day they invited me to go to San Francisco with them.

(Testimony of Jesus Santana.)

The Court: Will you read that answer? [125]

(Answer read.)

Mrs. Root: Now, if your Honor please, I think the use of the name "Mr. Gonzalez" is probably like using the name "Mr. Jones" or "Mr. Smith" in the American or English language. I think we should be able to ascertain from counsel's questions as to who this Mr. Gonzalez is that they are talking about.

Q. By Mr. Mandel: Which Gonzalez was it, Mr. Santana? A. Alfonso Gonzalez.

Q. Who is Alfonso Gonzalez?

A. Mrs. Gonzalez' husband.

Q. All right. Now then, when you were in Los Angeles and you did not find Jose Gonzalez, then what did you do?

A. They invited me to San Francisco with them, going to San Francisco on a trip and I went with them.

Q. And at that time did they talk with you about the car? A. Yes.

The Court: What car?

The Witness: The Dodge.

Q. By Mr. Mandel: All right. Who went then to San Francisco?

A. The three of us. We left my Plymouth in a garage in San Fernando and the three of us, Mr. and Mrs. Gonzalez [126] and myself, went to San Francisco.

The Court: In which car?

The Witness: In the Chevrolet.

(Testimony of Jesus Santana.)

Q. By Mr. Mandel: The Plymouth car was left in San Fernando at that time? A. Yes.

Q. All right, and then what happened?

A. We arrived in San Francisco and we stayed at the house of one of Mrs. Gonzalez' relatives. We stayed there that night and the following morning Mr. Alfonso Gonzalez took me to see Mr. Jose Gonzalez but Mr. Gonzalez was not there. And then the following day he arrived in San Francisco.

Q. And did you go to Jose Gonzalez' place?

A. Yes.

Q. About when in the month of September was that? That was the month of September, I take it?

A. About the 10th or 11th of September.

Q. All right. And then did you see Jose Gonzalez?

A. On the second day he wasn't there when we first arrived but I saw him about the second day after we had been there.

Q. Then what happened at that time?

A. We talked about the car. He wanted to sell me the car for \$1,600.00. I thought at that time it was too much [127] money. I remained there a few days and then later he came down on his price and I got the car for \$1,400.00. I bought it but I didn't get it. I didn't get possession of it until the last day of September because he needed it for his work. In the meantime they were repairing his own car and he needed this car for his work.

Q. You paid him cash \$1,400.00 for it?

A. Yes, I paid him cash \$1,400.00.

(Testimony of Jesus Santana.)

Q. All right. And where did you remain when you were in San Francisco from about the 11th or 12th of September until the end of September?

The Court: Why are we interested in that? How does that tend to prove or disprove any issue in this case?

Mr. Mandel: For this reason: We are attempting to show that while he was up in San Francisco this woman had an accident, your Honor please, and asked for the keys to his car.

The Court: Then why don't you get down to the accident? She did not have the accident, according to her testimony, until she was on her way home. Let us get down to the fact in the case.

Q. By Mr. Mandel: While you were in San Francisco did you get a request that either Mr. or Mrs. Gonzalez have the use of your Plymouth car in Los Angeles or San Fernando?

A. While Mrs. Gonzalez was in an automobile accident [128] around the 18th, Mr. Gonzalez came over and asked permission to use the car and I gave him the keys.

Q. All right. And did you know that Mrs. Gonzalez had left San Francisco for Los Angeles in the Chevrolet?

A. I didn't know it. The first I knew of it was when she had the accident.

Q. And you left San Francisco after you got possession of the Dodge with whom?

A. I came here with Alfonso Gonzalez.

Q. And that was about when?

(Testimony of Jesus Santana.)

A. It was either the first of October or the last day of September.

Q. All right. And then when you came to Los Angeles, where did you go?

A. When we first came to Los Angeles we arrived at the trailer. After that we went to a friend, a relative's house where the Plymouth was.

Q. And then what happened?

A. Then Mr. Gonzalez and I went to sleep in the trailer and Mrs. Gonzales stayed in her house with her sister.

Q. And did she have possession of the Plymouth car at that time?

A. Yes, she had the Plymouth and we had the Dodge.

Q. And did you have a conversation with Mr. and Mrs. Gonzalez with reference to the Plymouth car? [129]

A. I stayed in the trailer that night and I gave my overcoat and a ring to them to take to my wife in Mexicali.

Q. To Mr. or Mrs. Gonzalez? A. Mr.

Q. Wasn't there something else said about a letter?

A. Took the car, the overcoat and the ring to take to my wife.

Q. Did he mention anything about a note?

A. Yes, with a little note requesting \$100.00 from my wife.

Q. And what was it with reference to?

Mrs. Root: Now, I am sorry to interrupt, but

(Testimony of Jesus Santana.)

if your Honor pleases, this transaction as between Mr. Gonzalez and Mr. Santana I take it that it certainly is again hearsay as to my client and incompetent, irrelevant and immaterial.

The Court: I think the objection is good so far as the defendant Gonzalez is concerned. Counsel, I don't like to restrict you, but you are covering a lot of territory that does not tend to prove or disprove anything in this case.

Mr. Mandel: Well, if your Honor please, with reference to the trip down to Mexico, what I am trying to bring out from this witness is that there was a certain instruction, that that car was to remain in Mexico, and then all of a sudden it comes back.

The Court: Then why don't you bring that out? [130]

Q. By Mr. Mandel: Did you tell Mr. Gonzalez or Mrs. Gonzalez to take that Plymouth car and leave it with your wife? A. To Mr. Gonzalez.

Q. Did you know that Mrs. Gonzalez took the car?

A. Yes. I saw them leave. I gave them \$10.00 for gasoline.

Q. Forget the \$10.00. Anyway, did Mr. or Mrs. Gonzalez then leave for Mexico?

A. Yes, the three of them left. They had a little child with them.

Q. Did you intend that the machine be brought back to Los Angeles by Mrs. Gonzalez?

Mrs. Root: Just a minute. We will object to

(Testimony of Jesus Santana.)

that on the ground what his intentions were is incompetent, irrelevant and immaterial.

Q. By Mr. Mandel: What did you direct Mr. Gonzalez to do with the car?

A. To deliver it to my wife and he promised he would that very night.

Q. All right. Did you ever see Mrs. Gonzalez from that time on until the date of your arrest?

A. I didn't see them again until the day of the arrest.

Q. Did you ever see this suitcase before, Mr. Santana?

A. They had that suitcase in my car when they left for [131] Mexicali.

Q. Did you ever have possession of this suitcase at any time?

A. No, I never had possession. It isn't mine. When they went to San Francisco they had it with them.

Q. Was that suitcase ever in your possession?

A. Never.

Q. All right. Now, before September 30th of last year you never had possession of the Dodge, isn't that correct? A. No.

Q. You arrived in Los Angeles, you say, either the latter part of September or the first day of October of 1945, is that correct?

A. I am not sure—could have been the second or third of October.

Q. During that period of time you did not have the use of the Plymouth car, did you?

(Testimony of Jesus Santana.)

The Court: He testified Mrs. Gonzalez took it.

Q. By Mr. Mandel: From September 30th—that may be true—from the latter date did you have the use of the Plymouth car, from September 30th or, I will put it this way: Did you ever have use of the Plymouth car from the time you were in San Francisco in the early part of September until the date of your arrest? [132]

A. I hadn't touched the Plymouth from the day I left for San Francisco.

Q. Up until the time of your arrest, is that correct?

A. Didn't touch it. That is the first time I saw it after that time.

Q. With reference to the Dodge car, from September 30th until October 9th, the day of your arrest, did you always have possession of the Dodge car?

A. From about the 1st day of October until I was arrested.

Q. All right. Do you know a man by the name of Luis?

A. Luis? It is Mrs. Gonzalez' brother. I met him through them.

Q. Was he driving the car during any time from September 30th until October 9th?

A. He was driving up until the 9th of—he drove it up to the 9th of October.

The Court: Will you read that answer?

(Answer read.)

(Testimony of Jesus Santana.)

Q. By Mr. Mandel: Did Luis drive the car during that time?

A. At times he drove it two or three hours. I would go in the show and he would take the car.

Q. During the time that you were in the show he took the car? [133]

A. Yes. I used to lend it to him.

Q. Did you ever at any time ever put any can of opium in any part of that Dodge car?

A. I never put anything like that in it.

Q. Did you ever know that the can of opium was in the car?

A. No. Why should I have known it? If I had known——

Q. Did you ever know that there was a can of opium in the car?

A. No, I didn't know a thing.

Q. Did you ever know it until the officer took it out of the glove compartment of the car?

A. Not until the officer got it from the car.

Q. Did you speak to the officers the first time that you were arrested in this particular case? Did you speak to the officers in Spanish, English, or how?

A. They could speak a little Spanish and I could speak a couple of words of English, but we couldn't understand.

Q. When they came to your trailer—I mean to the trailer that you occupied, did you see Mrs. Gonzalez at that time?

(Testimony of Jesus Santana.)

A. I didn't see her until the officers got her out of the car and put her in the trailer.

Q. Then what did you say when you saw her?

A. I asked her why she left in my car and she said because there were no buses.

Q. What else did she say?

A. That is about all.

Q. Did you say anything about why you had been arrested or how you had been arrested?

A. No, I didn't.

Q. What else was said at that time?

A. That was all that was said at that time. They took me to jail and that was the end of that.

Q. Was there someone who saw you at the County Jail after you were arrested?

A. Mr. Gonzalez came up there with some attorney and got me out of jail. She came, Mrs. Gonzalez came up to the jail with her attorney or an attorney and told me to say that that car that she was in—that she was sending that car to her daughter.

Q. What did you say about that?

A. I told her, "Why should I say that the car was mine?" And she said, "Well, that is the only way you can save yourself," and later she came there with another attorney who could speak Spanish and this attorney told me that he was coming to claim——

Mrs. Root: Just a minute. What some attorney told him would be incompetent, irrelevant and immaterial, and [135] certainly not binding upon Mrs. Gonzalez.

(Testimony of Jesus Santana.)

The Court: It is immaterial anyhow what an attorney told him. Was Mrs. Gonzalez present?

The Witness: The first time she came there with one attorney and then the second time the attorney came without her.

The Court: That is immaterial.

Q. By Mr. Mandel: When the officer came to the trailer you were asleep at that time, I take it?

A. I was lying in bed.

Q. What time did you go to bed that night?

A. About ten.

Q. And did you see Mrs. Gonzalez before you—you have already testified you did not see her. Did you lock the car at that time?

A. I never locked it when I left it there. All I locked was the back of it.

Q. You never locked the front—that is, the front part of the car?

A. No, I never did. It was safe there.

Q. Do you remember having a conversation with Officer Pena in the Spanish language?

A. Yes. One day he came to the jail and took me to the attorneys' room in the jail.

Q. Did you tell him that you purchased the car in [136] San Francisco for \$400.00?

Mrs. Root: Now, if your Honor please, do we understand this is not against Mrs. Gonzalez and is hearsay as to her?

The Court: It is hearsay and the objection on the ground of hearsay, as far as the defendant Gonzalez is concerned, is sustained. This testimony is

(Testimony of Jesus Santana.)

not binding in any way, shape or form upon the defendant Gonzalez.

The Witness: He asked me if I bought the car and I said, "Yes," that I paid \$1,400.00 for it. He says, "That is very little money for a car like that," and I said, "Yes, but there is a lot of repairs to be done." He misunderstood me. He thought I said \$400.00. I said \$1,400.00.

Q. By Mr. Mandel: You definitely told him \$1,400.00?

The Court: That is immaterial, counsel, whether he said \$400.00, \$1,400.00, or \$14,000.00.

Mr. Mandel: That was the conversation Mr. Pena related. He stated \$400.00.

The Court: Maybe he did, but what materiality does it have in this case?

Mr. Mandel: I guess it would have none.

The Court: He admits he bought the Dodge car and whether he paid \$400.00 for it or \$1,400.00 makes no difference.

Q. By Mr. Mandel: Now then, you had a conversation with Mr. Pena on a subsequent occasion?

A. Just had a few words. He asked me a few questions. [137] That was all.

Q. What did he say?

A. He came over and asked me—he wanted to find out about this automobile and I told him.

Q. What did you say to him?

A. We didn't talk very much. He just asked me—wanted to find out what this was all about and I told him, that I didn't know—it wasn't my busi-

(Testimony of Jesus Santana.)

ness. I had my other occupations to take care of.

Q. Did you tell him that you had come to Los Angeles or San Francisco by car?

A. Yes, I told him.

Q. And did you ever tell him that you knew that Mrs. Gonzalez was engaged in the narcotic traffic in Mexico?

Mrs. Root: Of course that is hearsay again as to Mrs. Gonzalez.

The Court: Yes, the objection will be sustained as to Mrs. Gonzalez and the jury instructed it is not binding upon the defendant Gonzalez. You may ask the question now.

Mr. Mandel: Will you read the question?

(Question read)

A. No, I did not tell him that.

Q. You never knew at any time anything about the narcotics, either in the Plymouth car or in the Dodge car, isn't that a fact? [138]

A. No—why should I know? I didn't know a thing about that.

Q. Did you tell Mr. Pena at any time that someone else had access to the Dodge car during the time that you had it? A. No, I didn't.

Q. Did you mention the name of Luis to him?

A. Yes. I told him I didn't know his last name.

Q. And what did you say about Luis to him?

A. Well, he asked who was with me and I told him some fellow by the name of Luis.

(Testimony of Jesus Santana.)

Q. Now, you were arrested on the 9th of October? A. Yes.

Q. Did you tell Officers Reid and Beckner when they asked you about the can of opium in your glove compartment, as to whether or not you knew anything about that particular narcotic?

A. I didn't tell them anything about that. I didn't know anything about it.

Mr. Mandell: You may cross-examine.

Mrs. Root: Do you want to go first?

Mr. Binns: It doesn't make any difference to me.

Cross-Examination

By Mr. Binns:

Q. What did you grow down on your ranch in Mexico? [139] A. Cotton.

Q. Did you ever raise any opium?

A. No. Why should I plant opium?

Q. How many trips did you make to the United States across the border in 1945?

Mr. Mandel: That is not material, your Honor.

The Court: Objection overruled.

The Witness: About twice with my brother.

Q. By Mr. Binns: Did you see Mr. Gonzalez on each occasion when you came into the United States?

A. No, I never have seen him here.

The Court: What do you mean by "here"?

The Witness: I have never seen him here in Los Angeles. I have seen him in Imperial Valley.

(Testimony of Jesus Santana.)

from San Francisco, you came with Mr. Gonzalez—
Alfonso Gonzalez?

A. Yes; he was coming with me.

Q. You at that time, after arriving in Los Angeles rented the trailer of Mrs. Gonzalez, did you not?

A. No, I did not.

Q. When did you rent the trailer, if at all?

A. I never rented it.

Q. Did you pay her any money for the use of the trailer?

A. No, I didn't rent it. When Mr. Gonzalez left from here he gave me the keys to the trailer and said that I could use it. I had no money. I had \$20.00 left with me.

Q. So you moved into the trailer with your effects, is that right?

A. I had no personal effects there when I came back from San Francisco. Before I left San Francisco I left a suit of clothes in the trailer and the only change that I had was a pair of trousers that Mr. Gonzalez loaned to me.

Q. Did you see belongings of Mrs. Gonzalez in the trailer when you moved in?

A. I didn't see a thing. They loaned me a little corner in the trailer so I could sleep there.

Q. In other words, you did not look to see what was in the trailer, is that right?

A. No, I didn't.

Q. You were there how many nights and days?

A. About three nights.

(Testimony of Jesus Santana.)

Q. You could not tell me one thing that is on the inside of the trailer, is that right.

A. I had no authority to go looking for anything. I didn't look at anything. I just went to bed there.

Q. You saw the suitcase that is marked here in evidence sometime on the trip to San Francisco, did you?

A. Yes. They took their suitcase with them.

Q. Was that the suitcase that you saw on that trip?

A. Yes.

Q. You saw tools in that suitcase too, didn't you?

A. No, I didn't look in. I didn't look inside the suitcase. Why should I?

Q. So you didn't know at any time what was on the inside of the suitcase?

A. No; I didn't see what was in the valise.

Q. When was the last time you saw the suitcase that is now marked in evidence?

A. The 5th of October when they left Mexicala they put that suitcase in my car.

Q. Was Mrs. Gonzalez in Mexicala? [145]

The Court: Just a moment. Will you read the question and answer?

Mr. Mandel: I think, your Honor, he means the 5th of September.

The Court: Do you mean October or September?

The Witness: When they took my car was on the 5th of October.

Q. (By Mrs. Root) Mr. Santana, did they take

(Testimony of Jesus Santana.)

your car—you are speaking of the Plymouth car, I take it, is that right, you are talking about the Plymouth car?

A. Yes, when they were taking my Plymouth car to my home.

Q. Well, did they take it to—in Mexicala or did they take it, meaning Mr. and Mrs. Gonzalez, in Los Angeles?

A. When we come back from San Francisco they left in my car about the 5th of the month to take his car to his wife.

Q. But where did they take the Plymouth car from, Mr. Santana? Withdraw the question. Mr. Santana, where were you when you gave Mr. and Mrs. Gonzalez your Plymouth car?

A. Near the trailer.

Q. In Monterey Park, in Los Angeles County?

A. Yes, where the trailer was here in Los Angeles.

Q. And that was the last time you saw the [146] suitcase in Los Angeles County, is that correct?

A. Yes, when they left for Mexicala.

Q. Now, Mr. Santana, you have spoken of Luis. Are you talking about Luis Gonzalez or some other Luis?

A. I am talking about Luis, a brother of Mrs. Gonzalez.

Q. And that was whom you claim that you rode with in the Dodge car on the 8th of October and on the 9th of October, is that correct?

(Testimony of Jesus Santana.)

A. Yes, and from the 5th of October, since Mr. and Mrs. Gonzalez left, Luis and I were together and we would use the car.

Q. Can you tell me any one person that saw you and Mr. Luis Gonzalez together on the 8th or 9th of October, or from the 5th of October on?

A. I couldn't say who we visited. We visited several cocktail bars. We went to La Bamba. I didn't know anyone there.

Q. So that it is your testimony that you cannot name one person that saw the two of you together, Luis Gonzalez and yourself, between October 5th and October 9th?

A. No, because I don't know any of the bartenders or any of the people that were there.

Q. What time did you leave the trailer on October 9th, the last time? [147]

A. I left the trailer about eight o'clock. I left the trailer on the 8th and didn't return until the 9th in time to go to bed.

Q. In other words, you mean you came home on the early morning of October 9th?

A. You mean the trailer?

Q. Yes.

Mr. Mandel: That wasn't his testimony. He said on the 9th, he went to Olvera Street and retired.

The Court: Counsel, this is cross examination.

Mr. Mandel: I just wanted to clear that up.

The Court: Will you read the question?

(Question read.)

(Testimony of Jesus Santana.)

The Witness: Not until about between 9 and 10 o'clock on the 9th at night.

Q. (By Mrs. Root) And when had you last left the trailer?

A. I left the trailer on the 7th at ten o'clock in the morning. I didn't come back on the 8th. I came back on the 9th, between 9 and 10 o'clock.

Q. Had you driven your Dodge when you left on the 7th and came back on the 9th?

A. Yes, Luis and I were in the Dodge.

Q. So that you had had the possession of the Dodge away from the trailer when you left it on the 7th and that [148] you did not return until October 9th, is that correct?

A. Yes, Luis and I were together until noon on the 9th.

Q. So that you did not return from the time of your leaving on October 7th until you arrived at about nine or 9:30 on October 9th, back at the trailer, is that right?

A. Until I returned—until I returned the 9th at about ten o'clock when I went to bed.

Q. When did you loan the Plymouth to Mrs. Gonzalez?

A. I never loaned my Plymouth to Mrs. Gonzalez. I loaned it to Mr. Gonzalez and he took it back for me on the 5th.

Q. Didn't you loan the Plymouth car on or about the 7th, 8th or 9th to Mrs. Gonzalez?

A. No, I hadn't seen Mrs. Gonzalez since the

(Testimony of Jesus Santana.)

5th when they left. I had not seen her until the time we were arrested.

Q. You say that when you left the Dodge car at about ten o'clock upon your arriving on October 9th at the trailer, you did not lock the Dodge car?

A. I never locked it when I slept there.

The Court: Ask him if he locked it that night.

The Witness: No, I didn't.

Q. (By Mrs. Root) But the officer came in and asked you for the key to the Dodge car, didn't he?

A. Yes, the officers arrived and got the keys.

Mrs. Root: That is all, thank you.

Mr. Mandel: That is all, Mr. Santana.

Q. (By Mr. Binns) Mr. Santana, where were you with Luis from October 7th to October 9th?

A. We were driving the streets. Went to Santa Monica and drove here and there.

Q. Where did you sleep?

A. I slept in a hotel in Santa Monica on the 8th.

The Court: You slept where?

The Witness: I slept in a hotel in Santa Monica on the 8th.

The Court: Who paid the bill?

The Witness: Luis. I didn't have any money with me. And Luis wanted to pay for the room.

Q. (By Mr. Binns) Have you been able to recall Luis' last name?

A. No, I don't remember it.

Mr. Binns: No further questions.

Mr. Mandel: That is all.

(Testimony of Jesus Santana.)

Mrs. Root: I want to be clear about this brother-in-law Luis.

Q. Luis is the brother-in-law of Mr. Gonzalez or Mrs. Gonzalez?

A. It is Mrs. Gonzalez' brother.

Mrs. Root: That is all. [150]

Mr. Mandel: That is all.

The Witness: His last name is not Gonzalez.

A Juror: May I ask a question?

The Court: You may ask a question through the court if you desire.

A Juror: Where did the gentlemen sleep on the night of the 7th?

The Court: Where did he sleep?

The Juror: Yes, he testified he slept in Santa Monica on the night of the 8th but that he left the trailer on the 7th, so he was away from the trailer two nights.

The Court: Will you answer the question?

The Witness: In the trailer.

The Court: You said you left on the 7th, didn't you?

The Witness: There was only one night that I didn't sleep in the trailer and that was on the 8th.

The Court: I thought you said you left on the 7th.

The Witness: I must have made a mistake because there was only one night I didn't sleep in the trailer and that was on the 8th.

The Court: Does that answer your question?

(Testimony of Jesus Santana.)

The Juror: That answers the question but I understood him to say the 7th?

Mrs. Root: May I ask one question?

The Court: Yes. [151]

Q. (By Mrs. Root) Mr. Santana, what hour of the day or night did you leave on October 7th or 8th or whenever it was?

A. On the 8th I did not sleep in the trailer.

Q. (By Mrs. Root) All right, now on October 7th what time of the day or night did you leave, if you did leave on October 7th?

A. Well, I used to get up at——

Q. I am not interested in what you used to do. I want to know specifically the hour, Mr. Santana, that you left on October 7th, if you know?

A. I don't recall the exact time—between 8:30 and 9:00. At the time I used to get up.

Q. In the morning of October 7th when you got up you left, is that right?

A. Yes. At that time I came here to El Centro.

Q. And you didn't go back any time that day or that night, meaning October 7th?

A. Yes, I came back to the trailer on the 7th to sleep.

Q. And you went to bed then on the night of October 7th and what time did you get up in the morning of October 8th?

A. About the same time, around nine o'clock. That is the 9th. The 8th I did not sleep there. [152]

Q. So you got up on October 8th after having slept the night of October 7th and the early morning

(Testimony of Jesus Santana.)

of October 8th at about the hour of nine o'clock, is that right?

A. On the 7th I got up at 8:30 in the morning from the trailer and on the 8th I slept in Santa Monica and I got up about the usual time and I slept in Santa Monica on the night of the 8th and on the 9th I got up about 8:30 or 9:00 o'clock.

Q. So that you were in the trailer the night of October 7th and until 9 or 9:30 on October 8th, is that right, in the morning? A. Yes.

Q. Well, where was Luis then the night of October 7th? Was he with you in the trailer?

A. I don't know at night—we were together during the night and but I don't know where he spent the night.

Q. You mean during the day of October 8th?

A. Yes, we used to see each other on Third and Main every day but I didn't know where he was at night.

Q. Mr. Santana, I am not interested in what you used to do.

The Court: And I am not interested in this continued examination about the 7th and 8th.

Mrs. Root: The point is, if your Honor pleases. I would like to know and I am sorry I am not clear in my own [153] mind, but when this Luis situation comes in about driving the car, that is why counsel is interested in it.

The Court: That is the Dodge car you are speaking of?

Mrs. Root: Yes, about the Dodge car.

(Testimony of Jesus Santana.)

The Court: If you can determine that you may proceed.

Q. (By Mrs. Root) How many times was Luis in the Dodge car with you between the 7th and 9th?

A. I don't recall the exact number of times but two or three times. We used to see each other about two or three times a day. Used to meet at Third and Main.

Mrs. Root. That is all.

Redirect Examination

By Mr. Mandel:

Q. Mr. Santana, just before your arrest on the 9th there were occasions before the 9th when your car was used by Luis and you were in a theatre, isn't that correct?

The Court: Just a moment, counsel. That has been asked and answered.

Mr. Mandel: I didn't know.

The Court: Yes, it has been asked and answered two or three times.

Mr. Mandel: All right. Very well, that is all, Mr. Santana.

Mr. Binns: No further questions.

Mr. Mandel: Mr. Sanford, will you please take the [154] stand?

FRANK J. SANFORD

called as a witness by and on behalf of the defendant Santana, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Frank J. Sanford.

Direct Examination

By Mr. Mandel:

Q. Mr. Sanford, you are now in the County Jail serving a sentence for possession of opium, are you?

A. Yes, sir.

Q. You are in the same tank as Mr. Santana, is that correct? A. That is correct.

Q. Before you came to the tank he was in the tank already, is that correct? A. Yes.

Q. Did you ever see Mr. Santana before that time? A. Never.

Q. Before you went into the tank?

A. No.

Q. Do you know a man by the name of Luis?

A. Yes.

Q. Do you know his last name? [155]

A. No, I don't know his last name.

Q. And did you ever have occasion to ride around in a Dodge car—may I see that picture, counsel? Did you ever have occasion to ride in a Dodge car with Luis? A. Yes.

Q. Prior to the 9th of October? A. Yes.

Q. Of last year? A. Yes.

(Testimony of Frank J. Sanford.)

Q. Can you fix the time approximately when it was? A. The last time?

Q. Yes.

A. Well, it was the day before Mr. Santana and Josephine Gonzalez' arrest came out in the paper.

Q. You read of their arrest in the paper?

A. Yes.

Q. And when you saw the name "Santana" in the papers as a co-defendant with Josephine Gonzalez having been arrested, did you fix Santana as somebody that you had met or seen before?

A. No.

Q. What did the name "Santana" mean to you?

The Court: Just a moment. That calls for a conclusion of the witness.

Q. (By Mr. Mandel) Did you believe Luis—did you [156] associate Luis as Santana?

A. No.

Q. I mean at the time you read the account in the paper did you associate Luis with Santana?

A. No; I associated him as Gonzalez.

Q. As Gonzalez? A. Yes.

Q. You mean Santana you thought was Gonzalez?

Mrs. Root: Just a moment.

The Court: Just a moment, counsel. I don't know what counsel thinks about it, but this kind of testimony, in the court's opinion, is the poorest and weakest kind of testimony that can be presented in a court. To bring a confessed opium possessor into court as a witness, who is occupying the same tank as the defendant, is in the court's opinion weak

(Testimony of Frank J. Sanford.)

and almost unbelievable. In making that statement I want to advise the jury that that is my own opinion and that that opinion is in no way binding upon the jury.

Q. (By Mr. Mandel) When did you have a conversation with me for the first time, Mr. Sanford? A. Yesterday.

The Court: I meant that as no reflection on counsel.

Mr. Mandel: If your Honor please, I am sorry that this man is a convicted felon or whatever it is.

Q. Did you have occasion to go with Luis in a car? [157] A. Yes.

Q. What kind of car was it? A. Dodge.

Q. What was the color of the Dodge car?

A. Gray.

Q. Do you remember the license number?

A. No, I never take license numbers.

Q. I show you a photograph, Government's Exhibit 14. Will you look at that picture?

A. Yes.

Q. Does that picture indicate to your mind any particular car that you may have seen before?

A. I couldn't swear it is the same car but it looks like it.

Q. You don't see Luis in the courtroom at this time, do you? A. (No answer.)

Q. You don't see Luis at this time?

A. (No answer.)

Q. I say, do you see him in the courtroom at this time? A. I don't believe so, no.

(Testimony of Frank J. Sanford.)

Q. Well, when you were with Luis did you ever see Santana at any time? A. No.

Q. And when you were with Luis in the Dodge car—when [158] were you with him?

A. The day before the—the day before I read in the paper about Santana's arrest.

Q. And how long were you with him, do you remember?

A. Well, we drove in the car from Second and Fremont to Sixth and Hill.

Q. About how long was it?

A. Oh, could be ten minutes, at most.

Q. Did you at any time have occasion to see Luis before this time in the Dodge car?

A. No.

Q. How long have you known Luis?

A. I knew him about four days before—about the 2nd of October or the 1st, around there.

Q. About that? A. I couldn't say.

Q. And at no time did you see Santana?

A. No.

Mr. Mandel: You may cross examine.

The Court: Did you see any opium in that car?

The Witness: Not in the car.

Cross Examination

By Mr. Binns:

Q. Where did you see it?

A. Well, I didn't see it any place except when Luis [159] handed me the sample. That was the day that I was in the car but that was before I ever saw the car.

(Testimony of Frank J. Sanford.)

Q. I see. And what was the occasion for you going for a ride with Luis in this car?

A. Well, we had business and after the business was over for the day he just gave me a ride from Second and Fremont to Sixth and Hill.

Q. What business did you have?

A. Well, it was a transaction concerning opium.

Q. Did you buy it or sell it?

A. Neither.

Q. What did you do in connection with the selling of opium?

A. I introduced him to a buyer.

Q. Did you see—

The Court: Who did you introduce him to?

The Witness: A friend of mine.

The Court: What is his name?

The Witness: Well, sir, you see there was no buyer. We were going to take the opium to show it.

The Court: Who was the party?

The Witness: I think I can't say the name.

The Court: The court directs you to state the name.

The Witness: Well, his name is Pepper but I don't know the last name. [160]

The Court: Did you get the opium?

The Witness: No, sir.

Q. (By Mr. Binns) As I understand it, then, you and Luis were going to buy opium, is that it?

A. No.

Q. What were you going to do?

A. Luis was just, I suppose he was just—just a

(Testimony of Frank J. Sanford.)

go-between like myself for somebody else and he said that he could get rid of it and he came to me. Well, I told Luis I could get rid of it for him.

Q. In other words, you and Luis were going to sell some?

A. No, I wasn't going to sell anything.

Q. But Luis was going to sell it?

A. Yes, sir.

Q. Did you see the opium that Luis had?

A. No, just the sample.

Q. What did he take the sample from?

A. I don't know where he got it.

The Court: When did you see that sample?

The Witness: Well, that same day.

The Court: Were you in the car at the time?

The Witness: No, not in the car—outside the car, before I got in the car.

The Court: And where? [161]

The Witness: On College and North Broadway.

Q. (By Mr. Binns) Where did he have the sample?

A. We went in a bar and I asked him for the sample and he said he left it out on the street, so I told him to go get it. He went out and brought it.

Q. What was it when he brought it?

A. Opium.

Q. What does opium look like?

A. Gum opium, like all other opium.

Q. What color is it?

A. Well, it is dark, almost black. It was cooked ready for use.

(Testimony of Frank J. Sanford.)

Q. You did not see the container he had it in?

A. No.

Q. How much did he tell you he had for sale?

A. He said he could get me 100 cans.

Q. Is that the size transaction you went out to work that day?

A. Yes—no, I just went out to introduce him to my front.

Q. And you had only met Luis four days before?

A. Just about. I had seen him every day since then for three or four days.

Q. Do you know where he lives?

A. No. [162]

Mr. Binns: May we have a moment, please, your Honor?

The Court: As I understood your testimony, you were going to see the sample and then what did you intend to do?

The Witness: We expected to make a phoney bargain for him.

The Court: Make a phoney bargain?

The Witness: Yes, sir.

The Court: For what purpose?

The Witness: To get a hold of the opium without paying him for it.

Q. By Mr. Binns: Do you know Alfonso Gonzalez? A. Just by sight. I met him once.

Q. Did you meet him with Luis? A. Yes.

Q. Were they together on this transaction that you talked about?

A. Yes, they both came to me.

(Testimony of Frank J. Sanford.)

Mr. Binns: May I have this marked Government's next for identification?

(The document referred to was marked as Government's Exhibit No. 15, for identification.)

Q. By Mr. Binns: Mr. Sanford, I show you Government's Exhibit 15 for identification and ask you do you know the man who appears at the right?

Mrs. Root: I will object to this line of questioning on [163] the ground it is hearsay as to Mrs. Gonzalez. They are apparently referring to Alfonso Gonzalez, the husband of Mrs. Gonzalez. He is not on trial and it is, therefore, irrelevant, immaterial and incompetent as to her and is hearsay likewise.

The Court: I am going to restrict the examination at this time. However, it may be that under the conspiracy count the jury will have the right to consider this testimony except statements made by the defendant after the conspiracy, if any, terminated. Answer the question.

Q. By Mr. Binns: I asked you the gentleman on the right, in the forefront of the picture, do you know him? A. Yes.

Q. Who is that? A. Santana.

Q. Now then, I ask you the gentleman on the left in the forefront, who is that?

A. Gonzalez.

Q. Which Gonzalez? A. The one I met.

Q. That is the one you met? A. Yes.

Q. Mr. Adolph Gonzalez, will you please stand up?

(Testimony of Frank J. Sanford.)

Is that the one you are referring to as the one you met? A. Yes. [164]

Q. Now then, there is the third gentleman here in the foreground. Do you know that gentleman?

A. No.

Q. You don't know him? A. No.

Q. Is that the gentleman you have been referring to as Luis? A. No.

Q. That is not? A. No.

Q. Have you ever seen Luis since this occasion about which you testified when he came to you in a Dodge car?

A. No, that is the last time I saw him.

Mr. Binns: No further questions.

Q. By Mrs. Root: What did Luis look like? Describe him.

A. I don't know. He is short, dark. He has—I suppose he still has some, something like itch or something up around here—something like itch.

Q. What else? How big a man was he?

A. He is a small man.

Q. As big as you are?

A. A little smaller.

Q. How tall are you?

A. Five eight or nine. [165]

Q. You think he is how much smaller than yourself? A. Two or three inches.

Q. You say that this car was a gray car?

A. Yes.

Q. Do you know the difference between blue and gray? A. Yes.

(Testimony of Frank J. Sanford.)

Q. And it wasn't blue, is that right?

A. No.

Q. And you rode in this Dodge car on October the 1st or 2nd, is that right?

A. Neither.

Q. What date?

A. I imagine it would be the 8th.

Q. 8th of October? A. (No answer.)

Q. What time of the day?

A. Oh, around five.

Q. In the evening? A. In the evening.

Q. You were with him but a very few moments, is that right?

A. Well, I was with him about—I had a date with him at two o'clock in the afternoon, but I made him wait, so I didn't get there until about three, and then I took him to, I told—I took him to Ord and Broadway and to this place [166] I met him on College and Broadway, North Broadway, at five and from there I was with him about 20 minutes and then I left him and met him at Second and Fremont and then I rode with him to Sixth and Hill.

Mrs. Root: That is all.

Mr. Mandel: Just one question.

Redirect Examination

By Mr. Mandel:

Q. This picture that was shown to you by counsel for the Government, you pointed out to the extreme right Mr. Santana, is that right?

A. Yes.

(Testimony of Frank J. Sanford.)

Q. And you pointed out which gentleman as Alfonso or Albert Gonzalez, which one of the three?

A. This one here.

Q. The one at the extreme left? A. Yes.

Q. I take it from your testimony that Alfonso Gonzalez you saw sometime prior to October 8th of 1945, is that correct? A. Yes.

Q. That was not the occasion when you saw Luis, is that right?

A. I saw them together.

Q. You did see them together? [167]

A. Yes.

Q. You saw Luis and Alfonso together?

A. (No answer.)

Q. And Santana. However, you never saw him prior to the time that you met him in jail?

A. That is right.

Mr. Mandel: That is all.

Recross Examination

By Mrs. Root:

Q. You mean you saw Alfonso Gonzalez and Luis on October 8th together?

A. No, he said prior to October 8th.

Q. How much prior?

A. Well, I wouldn't know. Between the 1st and the 8th.

Q. Where were you when you saw Alfonso Gonzalez?

A. I was on Temple Street between Hill and Olive.

(Testimony of Frank J. Sanford.)

Q. Were you walking or in a car or just what?

A. I know they brought Luis—a friend of mine that Luis went to see brought him over to me. I stepped back into a parking lot where I would be in the shadow and they would be in the light. I was about from here to here from them.

Q. That was the only time that you saw Mr. Gonzalez? A. That is right. [168]

Q. Alfonso Gonzalez? A. That is right.

Q. By the Court: Were you passing any opium at that time?

The Witness: No, I was just looking at them—hearing their story.

The Court: What were you looking at?

The Witness: I was listening to the proposition.

The Court: Whose proposition?

The Witness: Luis.

The Court: And this Gonzalez was also present?

The Witness: That is right.

Q. By Mr. Binns: If I say the name “Villalva” does that recall to you Luis’ last name?

A. I am not quite sure. I have a card of his.

Q. Well, does Villalva sound like it?

A. I couldn’t say.

Mr. Binns: No further questions.

Redirect Examination

By Mr. Mandel:

Q. You saw Alfonso sometime in the early part of October, did you not? A. Yes.

Q. And Luis you saw subsequently?

(Testimony of Frank J. Sanford.)

A. I saw him after that. [169]

Q. That was about a day before you say that you saw this notice in the paper?

A. No, that was the last time I saw him.

Q. In other words, you saw Alfonso before that? [mean Luis you saw on two occasions?

A. How is that?

Q. You saw Luis on more than on occasion?

A. Yes.

Mr. Mandel: That is all.

The Court: You say you saw him about the 8th. Did you see him on the 7th, the day before the last time you saw him?

The Witness: No, I don't think so.

The Court: You did not see him every day?

The Witness: No, not every day.

The Court: That is all.

We will take our evening recess at this time. The jury will bear in mind the admonition the court has heretofore given. At this time we will recess until 9:30 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p.m. a recess was had until 9:30 o'clock a.m., Thursday, February 21, 1946.) [170]

Los Angeles, California,

Thursday, February 21, 1946, 9:30 a.m.

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are present in court with their counsel?

Mr. Mandel: So stipulated.

Mrs. Root: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Let the record so show. You may proceed.

Mr. Mandel: As far as the defendant Santana is concerned, we are resting.

Mrs. Root: Mr. Alfonso Gonzalez, will you take the stand, please?

ALFONSO GONZALEZ,

called as a witness by and on behalf of the defendant Gonzalez, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Alfonso Gonzalez.

Direct Examination

By Mrs. Root:

Q. Will you state your name?

A. Alfonso Gonzalez.

Q. Mr. Gonzalez, you are the husband of Josephine Gonzalez, one of the defendants in this action?

A. Yes.

(Testimony of Alfonso Gonzalez.)

Q. And calling your attention to the first part of October, did you go to San Francisco?

A. In the first part of October?

Q. First part of September, 1945?

A. Yes.

Q. And whom did you go with, please?

A. I stay on my ranch when Mr. Santana come up there and ask me to come with him to Los Angeles and buy some truck. He say if I help him to buy a truck he give me some commission.

Q. You had been in some previous transactions in the selling of trucks to Mr. Santana?

A. Yes; I sell him one truck before.

Q. Mr. Gonzalez, you live where, please?

A. I live in Westmoreland, California.

Q. Is that in the Imperial Valley?

A. Yes.

Q. And is that on a ranch?

A. Ranch.

Q. And Mrs. Gonzalez lives with you?

A. Yes.

Q. Now, you went to San Francisco with Mr. Santana?

A. No; I come from Westmoreland to Los Angeles.

Q. I see, but ultimately the three of you arrived in [174] San Francisco?

A. Well, he come to Los Angeles and that time we come here everything closed here—some kind of holiday or something and no can buy truck here and then I talk to my wife and she say, and I go see

100
(Testimony of Alfonso Gonzalez.)

his brother-in-law—I mean my brother-in-law up there in San Francisco and I tell my wife I don't know if I can do because——

Q. Don't tell us about a conversation. You did get to San Francisco, is that right?

A. Yes.

Q. And Mr. Santana and Mrs. Gonzalez, the three of you were in San Francisco, is that correct?

A. Yes.

Q. All right. Now, did Mr. Santana purchase an automobile in San Francisco? A. Yes.

Q. And from whom did he purchase an automobile? A. My brother.

Q. And what is your brother's name?

A. Jose Gonzalez.

Q. When did he purchase it?

A. Well, I think he purchased it around the 15th or 17th of September.

Q. And when did you leave San Francisco?

A. The 3rd of October, around three o'clock in the [175] afternoon.

Q. Had Mrs. Gonzalez, the defendant in this action, left before you?

A. Oh, yes, she left, I think, on the 17th of September or 18th or something like that.

Q. Had you in the meantime heard of her having an accident? A. Yes.

Q. And was that your purpose in leaving San Francisco? A. What?

Q. Is that why you left San Francisco?

(Testimony of Alfonso Gonzalez.)

A. When she come to—I know she is in the hospital.

Q. Yes?

A. I tried to come back to Los Angeles and I telephone her to the hospital and she told me she is not serious and say that if I have got something to do up there I can stay.

Q. But you left on October 3rd, is that right?

A. Yes.

Q. From San Francisco? A. Yes.

Q. And whom did you leave with?

A. Mr. Santana.

Q. And how did you come down?

A. In his car.

Q. In which car? [176]

A. In the Dodge car he buy from my brother.

Q. The Dodge that he bought from your brother?

A. Yes.

Q. And when you arrived in Los Angeles where did you and Mr. Santana stay?

A. We come and stop over there in the trailer and I see the trailer is empty and I find, not from my wife, she say she is over there at my sister's place and I go to my sister-in-law and she say, my wife she is in the picture show pretty close to the house, and I talk to my wife and ask is she ready to go and she say the next day, and the children in school here and going to take next day and bring them over there to the Imperial Valley.

Q. Now, at that time did you and your wife leave for your home in Brawley? A. What?

100 (Testimony of Alfonso Gonzalez.)

Q. Did you and your wife leave for your home in Westmoreland?

A. We leave for Westmoreland at October 5th.

Q. On the 5th of October? A. October.

Q. Was your wife staying at her sister's between the 3rd and the 5th of October?

A. Yes.

Q. And you left Los Angeles on the 5th day of October. In what, please—what kind of car?

A. In the Plymouth car.

Q. And was that a car that belonged to Mr. Santana? A. Yes.

Q. Who left with you?

A. My wife and children.

Q. When did you come from Westmoreland to Los Angeles after the 5th of October?

A. Oh, I come sometime in November.

Q. Did you at any time—withdraw that. You saw the last witness that was on the stand last night by the name of Sanford?

A. I never see that guy.

Q. But you saw him here last night?

A. Yes.

Q. Didn't you? A. Yes.

Q. I call your attention to that gentleman, Mr. Sanford, and ask you if you have ever seen him before? A. No.

Q. Did you with one Luis meet him in an auto park any time between the 1st day of October and the 8th day of October, 1945, in the City of Los Angeles? A. No.

(Testimony of Alfonso Gonzalez.)

Q. And I call your attention more particularly to the [178] 8th day of October. Did you see him at that time? A. No.

Q. Now, I call your attention to the suitcase marked in evidence by the Government and ask you if you know whose suitcase that is?

A. Yes; it is my wife's suitcase.

Q. And when did you see it in regard to the 1st day of October? A. What?

Q. Withdraw the question.

When did you last see the suitcase?

A. Last time?

Q. Yes. A. In the house trailer.

Q. And where in the house trailer?

A. The day we leave for Imperial Valley.

Q. That was the 5th day of October?

A. Yes, the 5th in the afternoon.

Q. Did you note as to what was in the suitcase at that time? A. Yes.

Q. What?

A. She has—you know when Mr. Santana and I come in his car he got flat tire and the jack, his jack is no good, it is broke. When he loan the car to go back to the [179] Imperial Valley I remark about the jack and my wife say "I got the jack from the other car; I got the tools" and I tell her "Well, you give me the jack and pliers", I say, because "in case we might get some accident, because the tires not so good on the Plymouth car," and then we stop in the trailer and my wife took the suitcase out pretty close to the door of the trailer

(Testimony of Alfonso Gonzalez.)

and open up and give me the jack and the tools and wrap them in newspapers and I took it and put it in the Plymouth car.

Q. You took the jack out of the suitcase and put it into the Plymouth car? A. Yes, sir.

Q. And when again after that did you see the suitcase that is marked in evidence?

A. I don't see it until I see it here.

Q. You saw it here in the courtroom, that was the next time? A. Yes.

Q. Now, as to the keys on a key ring, did you note them in the courtroom?

A. (No answer.)

Q. I now hold in my hand keys, Government's Exhibit No. 3, and a container. Have you ever seen those before? A. Yes.

Q. Where did you see them? [180]

A. In the trailer.

Q. When?

A. My wife she leave the keys in the trailer.

Q. Did you not come back from Westmoreland with your wife after you had arrived there?

A. No; I stayed there.

Q. Do you know a Luis or Luis Gonzalez?

A. No.

Q. Did you at any time introduce Luis Gonzalez or a Luis to Mr. Sanford or vice versa?

A. No.

Q. Did you ever introduce a Luis to Mr. Santana, the other defendant in this action?

A. No.

(Testimony of Alfonso Gonzalez.)

Q. Did you ever see a Luis or a Luis Gonzalez or any man whose name, either the first name or the last name, was Luis to Mr. Santana? A. No.

Mrs. Root: That is all. You may take the witness.

Cross Examination

By Mr. Binns:

Q. Do you know Luis Villalva? A. Yes.

Q. Who is that?

A. My brother-in-law. [181]

Q. You say your wife was living at your sister-in-law's house. Is that Luis Villalva's wife's house?

A. No, my sister-in-law.

Q. That is another sister-in-law?

A. Yes, another sister-in-law.

Q. Did you ever introduce Luis Villalva to Mr. Santana? A. No.

Q. Where does Luis Villalva live?

A. He is living in Maple, 3731 Maple.

Q. In Los Angeles?

A. Yes, Los Angeles.

Q. How long have you known Mr. Santana?

A. Oh, I know him on December, 1944.

Q. You have known him since December of 1944?

A. Yes.

Q. That is the first time you met him?

A. Yes, sir.

Q. Where did you meet him then?

A. He go to my ranch, the ranch seven miles from Westmoreland. That time they go out and

(Testimony of Alfonso Gonzalez.)

ask me for a tractor. He say some fellow tell him I sell tractors.

Q. How often did you see Mr. Santana in 1945?

A. Well, I see him sometimes, maybe six or seven times or something like that. [182]

Q. Do you know if he came across the border each of those six or seven times you saw him?

A. Oh, yes.

Q. Where is Brawley in relation to Westmoreland?

A. That is seven miles from Westmoreland.

Mr. Binns: No further questions.

Mr. Mandel: I would like to ask a few questions.

Cross Examination

By Mr. Mandel:

Q. In September, the early part of September, 1945, you saw Mr. Santana, didn't you, in Imperial, according to your testimony? A. When?

Q. The early part of September, 1945, you saw Mr. Santana in Brawley?

A. The first time in September.

Q. I am speaking about September, 1945. You saw Mr. Santana, did you? A. Yes, sir.

Q. You saw him in Brawley with reference to the purchase of an automobile, is that correct?

A. No, sir.

Q. What was the conversation—what did he see you about?

A. Nothing at all. He come to my place and he say I [183] come with him to Los Angeles to buy a truck.

(Testimony of Alfonso Gonzalez.)

Q. That is what I am saying, an automobile or a truck.

The Court: There is a difference between a truck and an automobile, counsel.

Q. By Mr. Mandel: All right, he came to buy a truck, is that right? A. Yes, sir.

Q. Did you tell him at that time your brother-in-law had a Dodge car?

A. No, sir; I never mentioned—I not even know if my brother got a car or any kind of a car.

Q. Didn't he tell you he was interested in an automobile? A. No, sir.

Q. What were his transactions that you had with him? A. Well, farm implements.

Q. Farm implements? A. Yes.

Q. It was confined solely to farming implements, your conversation and transaction with him, is that correct? A. Yes, sir.

Q. Did you ever at any time converse with him about anything else other than that subject?

A. No.

Q. And on occasions he purchased from you or through you certain farming implements, is that correct? [184] A. Yes, sir.

Q. Caterpillar tractor or truck, is that correct?

A. Yes, sir.

Q. You introduced him to the Chief of Police at Calxico from whom he purchased a car?

A. No, never.

Q. Calipatria? A. Calipatria, yes.

Q. In one of the Valley towns he bought a

(Testimony of Alfonso Gonzalez.)

Caterpillar through your introduction, is that correct? A. Yes, sir.

Q. And there were about three transactions he had that way, is that true? A. Two.

Q. All right. Two. You saw him, you say, some six or seven times, is that right? A. Yes, sir.

Q. You first saw him in December of 1944?

A. Yes, sir.

Q. And did you go over the border to see him?

A. No; he come to my place.

Q. You never did see him in Mexicala where he lives? A. Oh, yes.

Q. Then you saw him there as well as—you alternated— [185] sometimes he came to Brawley or Westmoreland and you in turn came to Mexicala to his ranch, is that correct? A. Yes.

Q. He had quite an area under cultivation, is that true? A. Who?

Q. Mr. Santana. A. I don't know that.

Q. You never saw his ranch? A. No.

Q. Didn't you know what business he was in?

A. I hear he got a ranch and buy implements.

Q. Didn't you ever see his place? A. No.

Q. You didn't know he was growing cotton?

A. No.

Q. Where did you see him in Mexicala?

A. What did I see?

Q. Where did you see him?

A. His house.

Q. You never saw him at his place of business?

A. No.

(Testimony of Alfonso Gonzalez.)

Q. Was he dressed as a rancher or in ordinary dress clothes when you saw him?

A. The same clothes he has got. [186]

Q. He wasn't working at the time you saw him?

A. No. All the time I see him in the city.

Q. You mean Mexicala? A. Yes.

Q. You don't know where his ranch is?

A. No.

Q. Now then, do you know his wife, Mrs. Santana? A. Yes.

Q. You have seen her? A. Yes.

Q. Prior to the time of this case?

A. No. Sometime I look for Santana over there and I talk to his wife for him. She say he is around town.

Q. When he saw you at Brawley he asked you for the purchase of a truck, is that right?

A. I never see him in Brawley. I see him in Westmoreland.

Q. Westmoreland? A. Yes.

Q. How far is that from Brawley?

A. Seven miles.

The Court: Don't ask that question again, counsel. It has been asked and answered twice.

Mr. Mandel: I am not familiar with those cities.

Q. In Westmoreland you met him sometime in the early [187] part of September, 1945?

A. Yes, sir.

Q. And at that time he asked you if you could furnish him with a truck, is that correct?

(Testimony of Alfonso Gonzalez.)

A. No. He is going to ask me to come with him to buy a truck here in Los Angeles.

The Court: Why would he need you to help him buy a truck?

The Witness: Because we made the transaction before and he think I can get it for him in better shape or something, you know, and give me a commission like they do on the tractors and my own truck before, I sell it to him too.

Q. By Mr. Mandel: Then you accompanied him? You went in a car to Los Angeles with him, is that right? A. Yes.

Q. Did you tell him at first before you started out on your trip that you would go in your truck to Los Angeles?

A. I got no truck; he has my truck. I sell it to him.

Q. I am asking you did he ask you that question—what did you tell him? That you would go in your truck to Los Angeles with him?

A. How can I tell him that? I got no truck.

Q. You can answer the question yes or no.

A. No.

Q. Your truck at that time was being repaired, was it? [188]

A. No, it is in his possession.

Q. What is that? A. He has got it.

Q. I am asking you at the time, in September, 1945, when you had this conversation in Westmoreland, was your truck at that time being repaired?

A. He has got it.

Q. You are not answering the question.

(Testimony of Alfonso Gonzalez.)

The Court: He has answered the question. He told you he didn't have a truck; that he sold it to Santana. Is that correct?

The Witness: Yes, didn't have a truck.

Mr. Mandel: That was a truck long before this transaction. That was in the early part of the year.

The Witness: That was the only truck I have got.

Q. By Mr. Mandel: We are not speaking of January, 1945. I am speaking of September, 1945. Did you or did you not tell him you were going in your truck to Los Angeles? A. No, sir.

Q. All right, you have answered it now. Then you went with him in his Plymouth car to Los Angeles, is that right? A. Yes, sir.

Q. And your wife was at that time in Los Angeles, is that right? A. Yes, sir. [189]

Q. And when you came to Los Angeles you went to the trailer that you and your wife had occupied?

A. Yes, sir.

Q. And that was in Alhambra?

A. No—I don't know what the town is. Around four miles from here.

Q. That was not the one that was in Alhambra?

A. I think so. I don't know the name, but it is four miles from here on the road.

Q. How long did you remain in Los Angeles?

A. That time?

Q. Yes. A. Just only one night.

Q. What happened with Mr. Santana's Plymouth? A. What about it?

(Testimony of Alfonso Gonzalez.)

Q. What did he do with his Plymouth car?

A. He say he is going in his car on the road. He follow us, you know, to the other side of San Fernando some place. There he says his car got bad tires and use too much oil, and say he would like to go with us. I say that that is all right. So——

Q. So that the car was left in San Fernando?

A. Yes, sir.

Q. By Mr. Santana? A. Yes, sir. [190]

Q. And you and your wife and Mr. Santana then proceeded on to San Francisco from San Fernando, is that correct? A. Yes, sir.

Q. Now, to make sure that you understand me, all of you together left for San Francisco from San Fernando in your car, is that correct?

A. Yes, sir.

Q. And that was a Chevrolet car, was it not?

A. Sir?

Q. Chevrolet? A. That is my car.

Q. The Plymouth car remained in San Fernando during that trip? A. Yes, sir.

Q. You arrived in San Francisco then, and where did you go when you went to San Francisco?

A. To my brother-in-law's.

Q. Immediately, is that correct? A. Sir?

Q. Pretty quick, as soon as you arrived in San Francisco you looked for your brother-in-law?

A. We stopped there and Mr. Santana give an address for my brother and we go to my brother-in-law's house.

(Testimony of Alfonso Gonzalez.)

Q. You gave Mr. Santana the address of your brother, is that what you are trying to say? [191]

A. Yes, sir.

Q. Mr. Santana did not know your brother before this, did he? A. No, sir.

Q. All right. You gave him the address of your brother. Why? What was the reason?

A. Because I have to see him up there.

Q. Why did you tell Mr. Santana to see your brother? Why did Mr. Santana want to see your brother?

A. Because he say maybe he don't find room and I tell him I can take him up there because I don't know my brother-in-law and I give you the address for my brother and maybe he let you live there after I see you.

Q. What else was said besides that?

A. I don't know if he go up there or go to the hotel. I don't know. I met Mr. Santana—I met him over there at my brother's place.

Q. Was that the total conversation that you had? Are you giving us all the conversation?

A. Sir?

Q. Is that all that transpired as far as conversations are concerned? A. Yes, sir.

Q. Your brother had a Dodge car, is that correct? A. Yes, sir. [192]

Q. You knew that your brother was trying to sell that Dodge car?

A. No, I don't know that.

(Testimony of Alfonso Gonzalez.)

Q. You didn't know that? A. No, sir.

Q. You gave Mr. Santana your brother's address for him to go there? A. Yes, sir.

Q. As you say it was for one purpose, for the purpose of remaining there in San Francisco?

A. Well, I tell him in case he don't find a room maybe my brother let him stay there in that case. "I see you the next day up there."

Q. Did you see him the next day?

A. Yes, sir.

Q. What happened the next day when you were there?

A. When I go up there he is over there at my brother's place.

Q. What took place there?

A. That is a tailor shop over there.

Q. I don't care about the tailor shop. What did he do? A. He sit down over there and talk.

Q. Please, Mr. Gonzalez, what did he do? What did Mr. Santana do with reference to Mr. Gonzalez? Did they have a transaction? [193]

A. No. He is only over there talking, friends, that is all.

Q. Did you see the Dodge car?

A. No. My brother got the car in the garage.

Q. You didn't see the car at all?

A. At that time I didn't see the car.

Q. Wasn't there a sale of the Dodge automobile at that time? A. No, sir.

Q. When was the car bought by Mr. Santana from your brother?

(Testimony of Alfonso Gonzalez.)

A. On the 15th or 17th of September.

Q. When did you arrive in San Francisco?

A. Who?

Q. You with your wife and Mr. Santana?

A. My wife got my car over there at his place.

The Court: What date in September did you arrive, do you know?

The Witness: (No answer.)

The Court: When did you arrive in San Francisco?

The Witness: When I stay there.

The Court: When you went to San Francisco?

The Witness: Yes, sir.

The Court: What day did you arrive? What was the date that you arrived in San Francisco?

The Witness: The day?

The Court: Yes, the day you arrived in San Francisco?

The Witness: I don't know, but I think the first part of September.

The Court: How long was it after you arrived that Santana and your brother made a deal for the Dodge car?

The Witness: Oh, around ten days, or 12 days. Something like that.

Q. By Mr. Mandel: When did you arrive from Westmoreland in Los Angeles?

A. I think in the first part of September.

Q. What do you mean "first part"? When did you leave Westmoreland in Imperial Valley?

(Testimony of Alfonso Gonzalez.)

A. I don't recall exactly but I think the first to the 5th, or something like that.

Q. 5th or 6th of September?

A. No, the 1st or the 5th—between that time. I don't remember the day.

Q. You say either the 1st or the 5th. It could have been the 1st, 2nd, 3rd, 4th or 5th?

The Court: I think he is trying to tell you between the 1st and the 5th.

Mr. Mandel: That is what I thought.

The Witness: Yes, sir.

Q. By Mr. Mandel: In other words, it would be just [195] as exact to say the 5th or 4th as the 1st, is that correct? A. Yes, sir.

Q. All right. Assuming it was the 5th of September, it took you a day at least to come to Los Angeles, is that right?

A. We come—we leave Westmoreland around 12 or 1 o'clock in the afternoon.

Q. When did you arrive in Los Angeles?

A. Around six o'clock.

Q. The same day? A. Same day, yes.

Q. Let us assume it was the 5th of September that you arrived in Los Angeles? A. Yes, sir.

Q. And you stayed in Los Angeles how long?

A. That night.

Q. That would take you to the 6th of September, is that right?

A. I don't remember the date.

Q. Well, I appreciate that fact, but if it was the 5th of September when you left the Valley, you

(Testimony of Alfonso Gonzalez.)

arrived in Los Angeles the same night. You remained one night, according to your testimony, in Los Angeles? A. Yes, sir.

Q. That would take you to the 6th of September? [196] A. I don't know the date.

Q. Approximately?

Mr. Binns: Your Honor, I think counsel is trying to argue with the witness. It is apparent to everybody about the date.

Mr. Mandel: This is my purpose: He says the man bought the car 10 or 12 days after he arrived in San Francisco. The testimony is that he bought the car on the 15th of September and he held the car—he couldn't take possession of the car because the man had some trouble with it.

The Court: But you are trying to pin this witness down as to a certain date when he left Imperial Valley and he will not commit himself. All he tells you is that he left between the 1st and 5th. You want to assume it was the 5th as the date he arrived in Los Angeles and that he left the next day for San Francisco and assume it took him two days to go to San Francisco which would place him there on the 8th, and then he said about ten days afterwards. But if he left on the 1st his statement would fit in with it. He says about ten days after he arrived up there. He is not telling you it was ten days or nine and a half days or ten and a half days.

Q. By Mr. Mandel: Couldn't it have been on

(Testimony of Alfonso Gonzalez.)

the 10th of September when you arrived in San Francisco? [197] A. Sir?

Q. Couldn't it have been the 10th of September when you arrived in San Francisco?

Mrs. Root: Just a minute. I object to that on the ground that it is argumentative.

The Court: Yes, it is.

Q. By Mr. Mandel: You don't know exactly when you arrived in San Francisco?

The Court: That has been asked and answered, counsel.

Q. By Mr. Mandel: Now, did you see the Dodge car in San Francisco? A. Yes.

Q. When did you see it?

A. A lot of times.

Q. When did you see it the first time?

A. I think two or three days after we stay there.

Q. And that was in the garage or in the possession of your brother?

A. No. My brother took it from the garage and stop in front of the place because he have to go and get clothes for the cleaner.

Q. And Santana was staying there at that time?

A. Sometimes go up there.

Q. Where was he staying if he wasn't staying there? A. I don't know. [198]

Q. You don't know? A. No.

Q. Did he have people in San Francisco?

A. Sir?

Q. Did he have any people in San Francisco?

A. Who?

(Testimony of Alfonso Gonzalez.)

Q. Santana? A. I don't know.

Q. You did have people, though, in San Francisco, didn't you? A. Yes.

Q. You were taking him to your place in San Francisco?

A. No, I don't take him over to my people.

The Court: What did you go to San Francisco for?

The Witness: I go to see my brother-in-law—take my wife to see her brother.

The Court: What did you take Santana for?

The Witness: He said he wanted to go. He stop and see somebody that owe him money. We stop in Fresno.

Q. By Mr. Mandel: Does he have a mother in San Francisco?

A. No, I don't say that. He say he is going to stop in Fresno to see a fellow that owe him money.

Q. Fresno? A. Yes. [199]

Q. Did you stop in Fresno?

A. Yes, we stop in Fresno.

Q. How long did you stop in Fresno?

A. Well, we eat over there and we go to some ranch. You ask him.

Q. I am asking you. How long did you stay in Fresno? A. We leave the same day.

Q. You just stayed there enough to eat and go on your way?

A. We stop there to eat and then we took him looking for that fellow. He say he owe him money and he go to some ranch up there.

(Testimony of Alfonso Gonzalez.)

Q. How long did you remain there?

A. Well, maybe an hour or two or something like that.

Q. Then you went on to San Francisco from there?

A. He say he want to go too, because he got a brother some place up there.

Q. Wasn't it the general idea you were all to go to San Francisco when you left Los Angeles?

A. To see Josephine's brother-in-law.

Q. When you were in San Francisco when was it that you learned that Mr. Santana had purchased your brother's car?

A. You mean when I find out Santana buy the car?

Q. That is what I asked you.

A. That is what I want to know. He told me but I [200] don't remember when.

Q. You mean Santana told you? A. Yes.

Q. You saw the car in his possession, didn't you?

A. Yes, he has the car.

Q. When did he get it?

A. I don't know. He got it different times.

Q. Did you know that your brother had sold the car to Mr. Santana? A. Yes, sir.

Q. How much had he sold it for?

A. I don't know.

Q. You don't even know that? A. No.

Q. Your brother did not tell you that?

A. Well, you know my brother doesn't answer the question because—he don't tell me.

(Testimony of Alfonso Gonzalez.)

Q. Did you see the car—I mean, did you see whether or not the car had some tires?

A. What?

Q. That needed recapping, the tires of the Dodge car?

A. I don't know.

Q. Did you see that?

A. I don't know.

Q. You did not notice the condition of the car? [201]

A. I don't know.

Q. That was a 1941 Dodge, was it not? Gray?

A. Blue, light blue.

Q. In other words, "Pluma" in Spanish?

A. Blue.

Q. A blue car?

A. Yes, kind of blue.

Q. This car was a gray car, wasn't it?

Mrs. Root: No, it wasn't. Look at your registration slip.

Q. By Mr. Mandel: This was a Dodge 1941?

A. Yes, sir.

Q. Blue—I mean gray—a gray-tone color?

A. What did you say?

Q. Gray?

A. No, blue car.

Q. Blue?

A. Yes.

Q. Now, was it that your brother—I will withdraw that. Your brother had a car that he was having repaired at that time when he had the transaction with Mr. Santana?

A. No, the car never been in the garage. Running around all the time.

Q. What is that?

A. The car, it never be in the garage. [202]

(Testimony of Alfonso Gonzalez.)

Q. No, I mean was there another car that was being used by Mr. Gonzalez, your brother-in-law?

A. No. This is the only car he got.

Q. And do you know whether or not he told Mr. Santana that he could not give him possession of the car until his other car was repaired or until he got another car?

Mrs. Root: We will object to that on the ground it is hearsay as to the defendant Gonzalez and is incompetent, irrelevant and immaterial.

Q. By Mr. Mandel: If you know.

Mrs. Root: And it is not proper cross-examination.

The Court: I don't know what difference it makes. There is no dispute about the purchase of a car up there.

Mr. Mandel: It is a question of credibility we are going into, your Honor.

The Court: Everybody admits he bought a car up there, a 1941 Dodge, and I don't know why you are arguing about it and spending so much time. The question before this jury is whether or not these people or either of them had in their possession certain narcotics or aided or abetted one of the parties in that possession.

Mr. Mandel: That is true, but I am trying to go into the question of the veracity of this witness.

The Court: You are doing everything but staying on that track, counsel. [203]

Mr. Mandel: All right.

Q. Mr. Gonzalez, you left San Francisco—with-

(Testimony of Alfonso Gonzalez.)

draw that. Before you left San Francisco your wife left the city—that is, San Francisco, with her Chevrolet car, is that correct? A. Yes.

Q. And she left alone, is that right?

A. Yes.

Q. And then thereafter she met with an accident somewhere in the inland route?

A. Yes.

Q. And was either in Newhall Hospital or some place after the wreck, is that correct?

A. Sir?

Q. She was in some hospital in the San Fernando Valley or at Newhall? A. Yes.

Q. And then you received word that she or some member of the family wanted to use the defendant Santana's Plymouth car that was in San Fernando? A. What?

Q. At that time you wanted to use Mr. Santana's Plymouth car that was in San Fernando?

A. Who want to use it?

Q. You or some member of your family? [204]

A. No. When my wife got the accident I phone her how she is and she say, well, she is not very sick. She say she is all right and in a few days be out of the hospital and then that time Mr. Santana he is in the tailor shop, because I phone from there and I tell him what my wife say and my wife say the car is completely demolished and can no use no more, and then Mr. Santana say, "Tell your wife get my car up there and use it" and he give me the keys and I sent the keys to my wife in the hospital.

150 (Testimony of Alfonso Gonzalez.)

Q. It was the other way around? You asked him for the keys?

A. No, no; he gave me the keys.

The Court: What difference does it make?

Q. By Mr. Mandel: Anyway, you asked him for the Plymouth car?

A. He proposed the car to me.

Q. Whether you did or he did you got the keys from him for the Plymouth car and sent them down to your wife? A. Yes.

Q. All right. And then she had the possession of the Plymouth car from there on as far as you know, is that correct? A. Yes.

Q. Did Mr. Santana at any time after that time ever have possession of that Plymouth car? [205]

A. Well, we come back. Sometimes he ride—no, no, he drive the Dodge car.

Q. The Dodge car? A. Yes, sir.

Q. From the time that your wife received these keys in San Francisco from you until the date of his arrest Mr. Santana never had possession of that Plymouth car, isn't that correct? A. Yes.

Q. I mean he never had possession of it?

A. No.

Q. Now then, you rode back to Los Angeles in the Dodge car some time around the latter part of September of last year, is that correct, September 30th or October 1st you left San Francisco?

A. We left San Francisco October 3rd.

Q. All right, October 3rd. And you arrived in

Testimony of Alfonso Gonzalez.)

Los Angeles some time either the next day or the following day or two days thereafter, is that true?

A. In what? In Santana's car you mean?

Q. Yes. A. Yes, I ride with him.

Q. And at that time you went where when you came to Los Angeles from San Francisco?

A. When we come to Los Angeles? [206]

Q. Yes. A. We go to the trailer.

Q. And that was where—where was the trailer?

A. My wife's trailer.

Q. But where? A. Right there.

Q. The one you say is about four miles away from the city? A. Yes, sir.

Q. Who was at the trailer at the time?

A. Nobody.

Q. And you found later your wife had either gone to your in-laws or your brother-in-law or somebody, a member of the family—anyway, she was staying there, is that correct? A. Yes.

Q. And then what did you do when you arrived there? A. Where?

Q. Well, where your wife was, not finding her at the trailer?

A. She was over there at my sister-in-law's.

Q. All right, at that time did Mr. Santana tell you that he wanted to deliver the Plymouth car to his wife in Mexicali? A. No.

Q. Did you have a conversation with him about the delivery of the car to his wife in Mexicali? [207]

A. No.

(Testimony of Alfonso Gonzalez.)

Q. How did you happen to take this car or your wife take the car to Mexicali or the Valley?

A. Because he ask to take the car out there.

Q. Yes, he told you to deliver the car to his wife, didn't he? A. No, he didn't say that.

Q. What did he ask you to do with the car?

A. He say to keep it there until after he go out there. He only going to stay there two or three days and then go get his car.

Q. Only going to stay in Los Angeles two or three days and then go back to his home?

A. That is what he say.

Q. That is what I am saying.

Mr. Mandel: He says yes, sir, and no, sir—"Yes, we have no bananas."

The Court: Don't argue with the witness so much. I think if you will ask your questions more directly you will get along better.

Q. By Mr. Mandell: Mr. Gonzalez, you took Mr. Santana's car and left for the Valley, is that right? He told you to take it along with you to the Valley and he would come there within two or three days afterwards, is that correct?

A. Yes. [208]

Q. And he didn't have any conversation with your wife with reference to taking the car, did he?

A. No, sir.

Q. He directed his conversation directly to you, didn't he? Gave you the keys or didn't give you the keys, but at least told you to take the car and go to the Valley?

(Testimony of Alfonso Gonzalez.)

A. He don't say nothing about it because my wife that time she got the car and we figure to go to Brawley to bring the girl to go to school. He say that we take the car.

Q. Prior to that time you went with him to some school to take your children out of school, is that right? A. Yes.

Q. He was along with you at that time in the Dodge car? A. Yes.

Q. And thereafter you told him that or, he told you that he wanted you to take the Plymouth car, which was then in the possession of your wife, and take it to the Valley?

A. He don't say nothing; no.

Q. What did he say? A. Nothing at all.

Q. Well, I thought you said he told you to go to the Valley? A. No, I don't say that.

The Court: You said he told you to take the car down to [209] the Valley.

The Witness: He got the car. He said we can have the car to bring the girl to the Valley and keep the car until he come back. That is what he say.

Q. By Mr. Mandel: Until he came back where?

A. He say he stay here two or three days and then go back.

Q. And then return to his home in the Valley, is that right? A. Yes, sir.

Q. In the meantime you were to take his Plymouth car there? A. Yes.

Q. Did he give you at that time a ring?

A. No. I got that ring long time before.

(Testimony of Alfonso Gonzalez.)

Q. I am asking you—what do you mean “before”? Do you mean Mr. Santana’s ring?

A. Yes.

Q. When did you get this ring?

A. In San Francisco.

Q. On this trip? A. On this trip.

Q. Did you have an overcoat, too?

A. He got his overcoat. He got some pants and something over in the trailer. [210]

Q. Did he give you an overcoat in San Francisco? A. No.

The Court: What did he give you the ring for?

The Witness: He got two rings and he say, “you keep that one”, and he give me the one ring to keep. He got two.

The Court: He bought two rings up there?

The Witness: I don’t know. He got two diamond rings and give me one. He said, “You keep that one” and he don’t mention about the ring to give it to nobody.

Q. (By Mr. Mandel) He told you to take the ring along with you and the car to deliver to his wife also. He gave you a note, didn’t he?

A. No, sir.

Q. His car is the Dodge car—did it need recapping or did it have some trouble with the tires?

A. No, I don’t think so. The car is here. You will find the tires.

Q. I am asking you did he have that conversation about the tires?

A. No, he didn’t say nothing about the tires.

(Testimony of Alfonso Gonzalez.)

Q. Didn't he tell you to take the ring to his wife and try to get some money from a man by the name of Saragosa in the Valley so he could recap the tires? A. No, sir.

Q. Didn't say that at all? [211]

A. No, sir.

Q. Didn't give you a note to his wife?

A. No, sir.

Q. Where were you to take the car to?

A. Sir?

Q. Where were you to take the car?

A. Where we take it?

Q. Where were you going with the Plymouth car? A. To my home.

A. And leave the car at your home?

A. Yes, sir.

Q. You were not going to take it to his wife?

A. No.

Q. Your wife did go to his wife in Mexicala, though, didn't she, with the car or went there?

A. How can she go to Mexicala that time? I got the car. She is over there in my daughter's place because she is sick that time.

Q. I am asking you, Mr. Gonzalez——

The Court: Did your wife go down to see Santana's wife at Mexicala?

The Witness: No, not that I know of.

Q. (By Mr. Mandel) You did not know that?

A. No, sir.

Q. Didn't your wife go to see her in Mexicala and tell [212] her that she was sorry she could not

(Testimony of Alfonso Gonzalez.)

bring her the car because she was ill and that she would come there the following day with the car?

Mrs. Root: Just a minute. We will object to that on the ground it is a compound question calling for two answers and is also hearsay.

The Court: Counsel has a habit of that.

Q. (By Mr. Mandel) Or did you— isn't it a matter of fact— didn't your wife go with the Plymouth car to Mrs. Santana's home in Mexicala?

A. What did you say?

The Court: Did you wife go down to Mexicala with the Plymouth car to see Santana's wife?

The Witness: I got the car on my ranch.

The Court: All the time?

The Witness: All the time. I leave my wife over there and in my son's place, and I took the car to the ranch.

Q. (By Mr. Mandel) To you knowledge she never went to Mexicala to see Mrs. Santana?

A. Not that I know of. How can she go?

Q. I am asking you. She never went there to see her?

The Court: As far as you know?

The Witness: No, I don't know.

Q. (By Mr. Mandel) Then afterwards your wife came back with the Plymouth car to Los Angeles, is that right? [213]

A. After what?

Q. I say, after that, sometime in October after the 5th or 6th, your wife left the Valley for Los Angeles again with the Plymouth car, is that correct?

A. Yes.

(Testimony of Alfonso Gonzalez.)

Q. Was that according to the instructions of Mr. Santana?

Mrs. Root: I object to that.

Q. (By Mr. Mandel) Did he tell you to do that? A. Who?

Q. Mr. Santana.

A. He don't say can do it or not. He loan us the car. That is all.

Q. Didn't he tell you the specific purpose for taking the car was to take it to his wife in Mexicala? A. No, he don't say that.

Q. And that he would be there in two or three days with his own car, is that right?

A. Yes.

Q. By the way, when you left on the 5th of October for the Valley where was the suitcase? This suitcase in evidence here? Do you see this suitcase here? A. Yes, sir.

Q. Where was that suitcase?

A. In the trailer. [214]

Q. In the trailer? A. Yes.

Q. You left for the Valley on October 5th?

A. Yes.

The Court: You did not take the suitcase with you?

The Witness: No, sir.

Q. (By Mr. Mandel) You did not take the suitcase at all? A. No.

Q. What was in the suitcase at that time?

A. Some, she—my wife open the suitcase over there and she took the tools and give it to me.

(Testimony of Alfonso Gonzalez.)

The Court: When you left the trailer there were no tools in the suitcase?

The Witness: She give me from the suitcase.

The Court: She took them out?

The Witness: Yes, sir.

The Court: And you took them with you?

The Witness: Yes, sir.

The Court: So all that was left in the suitcase was some dirty clothing?

The Witness: I think so—I think she got something over there.

Q. (By Mr. Mandel) That was on the 5th of October? A. Yes, sir. [215]

Q. And you did not see the suitcase after that?

A. No, sir.

Q. You don't know how the suitcase came into the possession of Mrs. Gonzalez, your wife, do you?

A. No.

Q. How is that? A. What you say?

Q. You never saw—you don't know how that suitcase happened to be in the possession of Mrs. Gonzalez, your wife, in the Plymouth car when she was arrested? A. No, I don't know.

Q. How is that?

A. I don't know nothing.

Q. You don't know anything about that?

A. I don't understand—what do you say?

The Court: He is asking you when you left Imperial Valley—when you went to Imperial Valley you stayed there, didn't you?

The Witness: Yes, sir.

(Testimony of Alfonso Gonzalez.)

The Court: And your wife came back to Los Angeles?

The Witness: Yes, sir.

The Court: And you wife was arrested with the suitcase in the car?

The Witness: Yes, sir.

The Court: And you don't how how the suitcase got [216] from the trailer back into the Plymouth, do you?

The Witness: No, sir.

Q. (By Mr. Mandel) Do you know Luis? You mentioned to Government counsel—he asked you if you knew Luis. I did not get his name.

Mr. Binns: Villalva.

Q. (By Mr. Mandel) Is he related to you, this Luis Villalva? A. Yes.

Q. Through your wife? A. Yes, sir.

Q. It is your wife's brother?

A. Yes, sir.

Q. Is he a short man, rather short?

A. Well, he is about, I think, around five feet and five or six inches, something like that.

Q. You saw the man Sanford testify yesterday in court? A. No, sir.

Q. You were not in the courtroom yesterday?

A. Sir?

The Court: The man that testified from the jail, did you see him?

The Witness: Yes, sir.

The Court: Here in the courtroom? [217]

The Witness: Yes, sir.

(Testimony of Alfonso Gonzalez.)

Q. (By Mr. Mandel) Did you ever see him before? A. No, sir.

Q. Never saw him in company of one of your brother-in-laws, Luis? A. No, sir.

Q. At no time? A. No, sir.

Q. This picture that you were in with Santana and some other individual, you are in this picture, in this photograph, are you not? A. Yes, sir.

Q. Well, look at it first.

A. Yes, that is me.

Q. That is you at the end, extreme left?

A. Yes, sir.

Q. Who is the other gentleman?

A. My brother.

Q. Your brother? A. Yes, sir.

Q. Is that Jose Gonzalez?

A. No, Roman Gonzalez.

Q. Was that taken here in Los Angeles or in San Francisco?

A. No, taken in San Francisco. [218]

Q. Some bar up there?

A. A restaurant there.

Q. By the way, during the entire trip from here to—from Westmoreland to Los Angeles and from Los Angeles to San Francisco and all the subsequent trips, was there ever any discussion with Mr. Santana that you had with him about anything other than what you have testified, as far as the car is concerned? A. Sir?

Q. I will try to break it down. During the entire time that you were with Santana, from the time you

(Testimony of Alfonso Gonzalez.)

left your home in Westmoreland up until the time that you went to Imperial Valley on the return trip in October, what transactions did you have with Mr. Santana? What was the purpose of his business with you?

A. He come to buy a truck.

Q. To buy a truck? A. Yes, sir.

Q. That was his sole and only reason for coming here, is that correct? A. Yes.

Mrs. Root: Wait a minute; he would not know that.

Mr. Mandel: All right.

Mrs. Root: Objected to on the ground it calls for a conclusion. [219]

The Court: That is what he testified to, that he came up here for a truck and ended up in San Francisco.

Mrs. Root: I was only thinking of the "sole and only purpose." I could not see how this gentleman could read his mind. I will withdraw the objection.

Mr. Mandel: That is all.

Q. (By Mr. Binns) How far is Mexicala from Brawley?

A. From Brawley is is around 30-some miles.

Q. How many times did you go to Mexicala in 1945? A. In 1945?

Q. Yes.

A. Oh, I think I go four or five times.

Q. Do you have to cross the border each time?

A. Yes, sir.

(Testimony of Alfonso Gonzalez.)

Q. Mexicala is in Mexico? A. Yes, sir.

Q. Did you see Santana every time you went over there? A. No, sir.

Q. How many times did you see Santana?

A. Well, I see Santana up there two times.

Q. Did you know Santana was raising opium on his ranch?

A. No, sir, I don't know nothing.

Q. After your wife gave you these tools——

Mr. Mandel: If your Honor please, we take exception to [220] that. There is no evidence upon which to base such a question.

The Court: And furthermore, I did not know that you "raised opium".

Mr. Mandel: I didn't think so either.

Q. (By Mr. Binns) After you took the tools out of the suitcase did you put them in the back of the Plymouth car? A. Yes.

Q. And that is where they were?

A. Yes, sir.

Q. And you say that because you knew that the tools in the Plymouth were not in good condition? A. Yes, sir.

Q. Now, you testified to conversations with Mr. Santana. Does he speak English? A. Yes.

Q. Did you talk to him in English?

A. He speak better than I.

Mr. Binns: That is enough.

The Court: Do you own this trailer?

The Witness: Sir?

The Court: Who does the trailer belong to?

(Testimony of Alfonso Gonzalez.)

The Witness: To my wife.

The Court: You keep it there all the time?

The Witness: Yes, sir.

The Court: So that you have a place to come to when [221] you come from the Imperial Valley up here? You always have a place to stay?

The Witness: She is on vacation. She bring the trailer on vacation, summer time. Too hot up there and doctor tell her to come.

The Court: She was renting it for the summer?

The Witness: Yes, sir.

The Court: She does not own the trailer?

The Witness: Yes, she owns the trailer.

The Court: And still owns it?

The Witness: Yes, sir.

The Court: And it is still out there?

The Witness: Yes, sir.

The Court: So that when she came from the Valley she had a place to stop?

The Witness: She is here—she never go back to the Valley.

The Court: But I know last October that was the situation?

The Witness: Oh, yes.

The Court: It is not hot in October.

The Witness: She is using the trailer because she is living over there with the sister-in-law.

The Court: But when you came up you knew you had a trailer to go to, didn't you? [222]

The Witness: Oh, yes.

(Testimony of Alfonso Gonzalez.)

The Court: And then when you left Los Angeles for San Francisco still the trailer was there?

The Witness: Yes, sir.

The Court: And it was there for you when you came back to it?

The Witness: Yes, sir.

The Court: And then when you came back your wife went to her sister-in-law's?

The Witness: Yes, sir.

The Court: And you let Santana use the trailer?

The Witness: Yes, sir.

The Court: So you have a home in Westmoreland?

The Witness: Yes, sir.

The Court: And then you have a trailer up here where you can stay?

The Witness: No, because my wife she is the only one to come here in the summer time. I stay in the Valley all the time.

The Court: I know, but she has a place she can come to any time she desires?

The Witness: Yes.

The Court: You do not rent it to anybody?

The Witness: No, sir.

The Court: It is just for her use or your use if you [223] happen to come up here?

The Witness: Yes, sir.

Mr. Mandel: I should like to ask one or two questions, if your Honor please.

Q. Mr. Santana never paid your wife any rental, did he? A. Sir?

(Testimony of Alfonso Gonzalez.)

Q. Mr. Santana did not pay your wife rent for the trailer, for the use of the trailer?

A. They give \$10.00 for it.

Q. \$10.00? A. Yes, sir.

Q. \$10.00 for what?

A. Mr. Santana he asked me—he say, “You let me stay in the trailer a few days” and I tell him that is my wife’s trailer. I tell my wife maybe don’t let him but he better talk to her when we go over to my sister-in-law to get the kid. That is what he talk about, the trailer.

Q. As a matter of fact, you got \$10.00 from him?

A. No, I don’t got it.

Q. Please, Mr. Gonzalez, I haven’t asked the question yet. If your Honor please, I was about to ask this question: You got \$10.00 from Mr. Santana for the purchase of gasoline that you were going to use with the Plymouth car in going to the Valley, isn’t that right? [224] A. No, sir.

Q. I thought you said before when the court questioned you that the trailer was not being rented to anyone? A. I don’t say that.

Q. Then I am in error.

Which is it then, that the trailer was for rent or that it was not for rent? A. No, sir.

Q. Which is it?

A. I don’t understand you.

Q. Was you wife renting the trailer or wasn’t she? A. To who?

Q. To anyone? A. No.

Q. She did not rent it to Mr. Santana either, then, is that what you mean?

(Testimony of Alfonso Gonzalez.)

A. He gave her \$10.00. He gave \$10.00 to her to let him stay there a few days. That is what he says.

Q. Who paid for the gasoline for your trip to the Valley? A. I did.

Q. You paid for the gasoline? A. Yes.

Q. He did not give you \$10.00 for the trip?

A. No, he don't give me nothing. [225]

Q. By the way, what did Mr. Santana say to you in English? You say he speaks English. How did he say it? Will you repeat the words.

A. He don't say nothing to me in English. I know he speak English.

Q. Did you ever hear him speak English? Just use the words that he used.

A. To say what?

Q. Anything. A. Well, you ask him.

Q. I am asking you what did he say in English?

A. What do you mean you are asking me?

The Court: Counsel, he cannot tell you all the words that he might have heard him use.

Q. (By Mr. Mandel) What do you remember that he said in English?

A. Well, like you say—like I say, like everybody say.

Q. What?

Q. I don't know nothing exactly what he say but I know he speak English.

Q. Well, what did he say?

A. Whatever I say—whatever you say.

Q. Give me just one thing.

(Testimony of Alfonso Gonzalez.)

A. In kind of deal he make—deal to American people and he make it better than I. [226]

Q. Will you tell me one single thing he said in English?

A. I don't want to lie to you.

Q. I don't want you to lie.

A. Well, I don't know what he say but he speak English. That is all I know. What I am going to tell you. He say something. I don't remember what word he say. He say plenty.

Mr. Mandel: That is all.

A. And you know very well he speak English.

Mr. Mandel: Your Honor, I take exception to the remark. I spoke to my client entirely in Spanish all the time.

The Court: What difference does it make?

Mr. Mandel: He says I know he speaks English, which is entirely wrong.

The Court: Counsel, if you want to take the oath and go on the witness stand you may do so, but what difference does it make, whether he speaks English or Spanish?

Mr. Mandel: That is all.

Redirect Examination

By Mrs. Root:

Q. Mr. Gonzalez, what was the last day that you rode in the Dodge car? Do you recall the date?

A. Yes. [227]

Q. When was it? A. The 5th.

Q. Of October? A. Of October.

(Testimony of Alfonso Gonzalez.)

Q. That is all.

The Court: What did your wife come back to Los Angeles for?

The Witness: To see the doctor.

The Court: You went down there to put the children in school?

The Witness: Yes, sir.

The Court: And as quick as you got down there your wife came back?

The Witness: No, she stay four days, I think.

The Court: Four days?

The Witness: Yes.

The Court: That is all.

Mr. Binns: No further questions.

Mrs. Root: Mrs. Macias.

HELEN MACIAS,

called as a witness by and on behalf of the defendant Gonzalez, having been first duly sworn, was examined and testified as follows: [228]

The Clerk: State your full name, please.

The Witness: Helen Macias.

Direct Examination

By Mrs. Root:

Q. Mrs. Macias, you are the sister of the defendant Josephine Gonzalez? A. I am.

Q. And you live where, please?

Testimony of Helen Macias.)

A. I live at 471 West 45th Street.

Q. Los Angeles? A. Los Angeles.

Q. And calling your attention to the first part of October and after the 20th of September of last year, did you see your sister? A. Yes.

Q. Where, please? A. At my home.

Q. And do you recall the date that she actually arrived at your home to stay with you for a few days?

A. It was on the 23rd of September.

Q. And can you describe her appearance at that time? In other words, had she been in an accident?

A. Yes. She was leaning on a cane and she was—she looked very badly.

Q. And she remained there with you until what date? [229]

A. She stayed with me until the 5th of October.

Q. At any time that your sister was there in your home did you see the suitcase that is marked as Government's Exhibit in this courtroom?

A. I did not.

Q. During the time that your sister Josephine Gonzales remained with you did you see Mr. Santana? The other defendant in this action?

A. Yes, I did.

Q. When and where?

A. On October 4th he came over to my house.

Q. Who were the persons present?

A. Mrs. Gonzales, Mr. Gonzales, Mrs. Gonzelez' grandchildren and myself.

(Testimony of Helen Macias.)

Q. And was there a conversation at that time as between Mr. Santana and Mr. and Mrs. Gonzales?

A. There was.

Q. Was it in regard to a trailer?

A. Yes.

Q. Tell us about that. What did Mr. Santana say and what did Mrs. Gonzales say?

A. Mr. Santana said that he was looking for a place to stay where it was safe because he carried large amounts of money on his person. He came to purchase cars and he wanted a safe place to stay at. My sister told him that he had her [230] trailer but she didn't rent it. He insisted on her accepting some money and letting him stay there and he presented a \$10.00 bill. She finally told him that he could stay there.

Q. Was there any period of time mentioned as to how long Mr. Santana was to stay in the trailer?

A. No.

Q. Did you see him give her the \$10.00 bill?

A. Yes, I did.

Q. After that conversation? A. Yes.

Q. Now, when your sister left your premises, your house, did she leave with Mr. Gonzalez, her husband? A. Yes.

Q. And how did she go, please?

A. They left in the Plymouth car belonging to Mr. Santana. The reason I saw that car was that day they had gone to bring the little child from school and I packed her belongings—her granddaughter, Mrs. Gonzalez' granddaughter. I packed

(Testimony of Helen Macias.)

her clothes into a little kit bag, canvas, and Mrs. Gonzalez was quite bad. She was leaning still on the cane, so I took the suitcase to the Plymouth car.

Q. Did you take the suitcase that is marked as an exhibit here? A. No.

Q. It was not her suitcase? [231]

A. There was no suitcase except the kit that I took to the car.

Q. Now, did you know of your own knowledge that Mrs. Gonzalez was under treatment of a doctor here in this community? A. I did.

Q. By the way, will you tell us whether or not Luis Villalva is a relative of yours?

A. He is a brother.

Q. Did you see him any time during October, from the 1st to the 8th? A. No, I did not.

Q. Did you see this Dodge blue car that Mr. Santana was driving at any time? A. No.

Q. Would you mind describing the appearance of Luis Villalva?

A. He is about five feet six inches and weighs about 100 pounds. He has a thin, long face.

Q. Anything about his mouth? A. No.

Q. I believe the witness used the word "hitch". I never did get it. Did you hear what the witness said in his description? A. Yes. [232]

Q. Did you know what he meant by it?

A. He mentioned there was a disfigurement in his mouth.

Q. Well, does your brother have a disfigurement about his mouth? A. He has not.

(Testimony of Helen Macias.)

Mrs. Root: That is all. You may examine, counsel.

Cross-Examination

By Mr. Binns:

Q. When was the last time you saw your brother?

A. It was in some time of last year, in Olive View Sanitarium.

Q. Can you tell us when?

A. Well, I believe it was at the time that he was staying there.

Q. When was that?

A. Well, I really don't know what date.

Q. Was that in June or July, or when was it?

A. I would not know, sir.

Q. Do you know if it was the first part of last year? A. It could have been.

Q. Could it have been in the last part of last year?

A. Well, I don't really know, because we made several visits there. We used to go there on Sundays.

The Court: You say he is in a sanitarium?

The Witness: He was in the sanitarium. [233]

Q. By Mr. Binns: Do you know if you saw your brother in October?

A. If I had seen him I would have known it, yes.

Q. But you don't know if you did or not?

A. I did not see him.

Q. You did not see him in October?

(Testimony of Helen Macias.)

A. No, sir, I did not.

Q. The last time you saw him he didn't have any itch, signs of itch on his face, did he?

A. No, sir, he never did.

Q. But you don't know for sure when you did see him last?

A. Well, I might have seen him before October.

Q. Have you seen him since this case started?

A. No, sir.

Q. Do you know where he is?

A. Well, I believe he is—his wife was at Maple Street, but they don't visit us.

Q. And you don't visit them?

A. No, we don't make visits.

Q. And you don't know where he is now?

A. No, sir, I don't.

Mr. Binns: That is all. [234]

Redirect Examination

By Mrs. Root:

Q. As to this Olive View Sanitarium, that is a sanitarium for tuberculosis patients, is it not?

A. Yes, sir.

Q. Maintained by the County of Los Angeles?

A. Yes.

Mrs. Root: That is all.

Recross-Examination

By Mr. Mandel:

Q. I would like to ask a few questions, Mrs. Macias. When your sister, Mrs. Gonzalez—she is your sister, is she? A. Yes.

(Testimony of Helen Macias.)

Q. Had this accident in the Valley, she had the valise with her, did she not?

A. I never saw the suitcase until I saw it in court.

Q. Didn't she have it in her possession?

A. No, sir.

Q. Do you know that?

A. I do not know that because I had not seen it until they brought it here in court.

Q. You have no knowledge as to whether she did or did not have the valise?

A. I know she didn't have the suitcase because she was [235] using some of my nightgowns to stay in bed at home.

Q. When was that?

A. During—from the 23rd of September to the 5th of October.

Q. Were you with her all that time?

A. Yes, I was.

Q. It was prior to the time she had the accident, prior to the 23rd of October?

A. It was prior to the 23rd of September.

Q. And you were not with her at that time?

A. No, sir, I was not.

Q. You don't know whether she had the valise at that time?

A. No, I do not know.

Q. Were you present when Mr. Gonzalez, your brother-in-law, and Mrs. Gonzalez, your sister, and Mr. Santana left for San Francisco from Los Angeles?

A. No, sir, I was not.

Q. Were they at your house? Mr. Santana and

[Testimony of Helen Macias.)

Mr. Gonzalez and Mrs. Gonzalez, were they at your house before they left for San Francisco?

A. No, sir, they were not.

Q. You did not see Mr. Santana before that?

A. No, until the 4th of October was the first time that he was introduced to me. [236]

Q. Now, you say you saw \$10.00 given to Mrs. Gonzalez? A. Yes.

Q. As a matter of fact, didn't Mr. Gonzalez receive \$10.00 for gasoline going down to the Valley?

A. No, sir; he gave the \$10.00 to Mrs. Gonzalez.

Q. You saw that transaction yourself?

A. I saw the \$10.00 go from him to Mrs. Gonzalez.

Q. All right. Now then, you heard the conversation then with Mrs. Gonzalez and Mr. Santana at that time? A. Yes, sir.

Q. Just before they departed?

A. Yes, sir.

Q. What was the conversation?

A. Well, it was that he was looking for a place to stay.

Q. I am not speaking about that—about going to Mexico?

A. That was the conversation that took place.

Q. Is that all the conversation that took place?

A. And the rental—he wanted a place to rent.

The Court: Was there any conversation about the trip back to Mexico in the Plymouth car?

The Witness: No, sir, there was nothing mentioned.

(Testimony of Helen Macias.)

The Court: In your presence?

The Witness: In my presence. [237]

The Court: You don't know what arrangement they made about the use of the Plymouth automobile?

The Witness: No, sir, I do not—oh, yes, on the use of the Plymouth she mentioned if she could borrow the car because there was a Greyhound strike and there was no way for her to take the children back to school.

Q. By Mr. Mandel: What else was said about that? A. Well, I believe that was all.

Q. Did he tell her to bring the car back from the Valley?

A. No, sir, he didn't say anything about bringing the car back. He did not say anything about taking the car there either. He just loaned her the car.

Q. You did not hear him say anything about the fact that he was going to the Valley within two or three days thereafter?

A. He said he was going to purchase some cars and then he would be back, but I don't know where he came from or where he was going.

Q. When did you say he was going to purchase some cars? On October 4th or 5th?

A. On October 4th. He asked me if I owned a car and I told him no.

Q. He asked you and then he said he was going to purchase some cars at that time?

A. Yes, sir. [238]

(Testimony of Helen Macias.)

Q. And that was on October 4th, you say?

A. That is right.

Mr. Mandel: That is all.

Mrs. Root: That is all.

Q. By Mr. Binns: I might ask you, do you know Roman Gonzalez in San Francisco?

A. No, sir, I don't.

Mr. Binns: That is all.

Mrs. Root: Carmen Gallardo.

CARMEN GALLARDO

called as a witness by and on behalf of the defendant Gonzalez, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Carmen Gallardo.

The Clerk: Is it Miss or Mrs.?

The Witness: Miss.

Direct Examination

By Mrs. Root:

Q. What is your relationship to Josephine Gonzalez? A. She is my mother-in-law.

Q. Then you are Mrs. Gallardo? A. Yes.

Q. Where do you live?

A. I live in Westmoreland. [239]

Q. You live in Westmoreland, California?

A. Yes.

Q. That is in the Imperial Valley?

(Testimony of Carmen Gallardo.)

A. Yes.

Q. Now, calling your attention to October 5th, did you see Mrs. Gonzalez at Westmoreland?

A. Yes.

Q. And did she return your child to you as of October 5th? A. Yes.

Q. Did you see what belongings she had when she arrived at Westmoreland on October 5th?

A. Yes.

Q. Did she have the suitcase that is marked as Government's Exhibit? A. No.

Q. Did you see that suitcase at all on October 5th? A. No.

Q. Have you ever seen it before?

A. Yes.

Q. Where? A. Here in Los Angeles.

The Court: Did you ever see it in the possession of your mother-in-law, Mrs. Gonzales?

The Witness: Not at the time she was in Westmoreland. [240]

The Court: Did you ever see it in Westmoreland?

The Witness: No, sir.

The Court: The only time you have seen it was in Los Angeles?

The Witness: Yes, sir.

The Court: Since she got into this trouble?

The Witness: No. I saw it way before she got into this trouble.

The Court: You did?

The Witness: Yes.

(Testimony of Carmen Gallardo.)

The Court: Did you see her using it?

The Witness: Well, when she was staying there I saw it. She bought the suitcase here.

The Court: And you have seen it in the trailer?

The Witness: Yes.

A Juror: Louder.

The Court: You saw it in the trailer, did you?

The Witness: Yes, sir.

The Court: Your answer is yes?

The Witness: Yes, sir.

A Juror: I can't hear her.

The Witness: I am sorry.

The Court: I wish you would speak up.

Q. By Mrs. Root: Did you see Mrs. Gonzalez, your mother-in-law, when she left from Imperial Valley on or about [241] October 9th?

A. Yes.

Q. Did she have the suitcase marked as an exhibit in this case with her at that time?

A. No.

Mrs. Root: That is all, counsel. You may examine.

Cross-Examination

By Mr. Binns:

Q. Did you look in the car? A. Yes.

Q. Did you look in the back of the car?

A. Yes.

Q. What was the purpose of your examining the car?

A. Well, the reason I went back in the car—in

(Testimony of Carmen Gallardo.)

the back of the car was because I thought probably she had some suitcases or something like that of hers, because she was staying with me on account of she was sick, but there wasn't anything there in the back, and then I came to the front where I saw my little girl's clothes, suitcase.

Mr. Binns: No further questions.

Mrs. Root: I have one further question if I might ask it.

Redirect Examination

By Mrs. Root:

Q. Mrs. Gonzalez was ill when she returned back to Los [242] Angeles from Westmoreland?

A. Yes.

Q. Did you know her purpose in coming back up here?

A. Yes, she was coming to see the doctor.

Q. Coming to see the doctor? A. Yes.

Mrs. Root: That is all.

The Court: She could not have been very ill. It is 125 or 130 miles from here to Westmoreland, isn't it?

The Witness: Yes.

The Court: And she drove alone?

The Witness: Yes.

The Court: That is all.

Recross Examination

By Mr. Mandel:

Q. Mrs. Gallardo, did you see the suitcase—I mean—yes, you saw the suitcase on some prior occa-

(Testimony of Carmen Gallardo.)

sions in Westmoreland in the possession of your mother-in-law?

A. No, sir; I saw it here in Los Angeles.

Q. Los Angeles? Some time prior to the time of the arrest?

A. I am talking about a summer ago.

Q. What is that?

A. That was about a summer ago that I saw the suitcase here. [243]

Q. And she has always had that suitcase when you saw her? A. No.

Q. Is that right? A. Not all the time.

Q. Who else had it?

A. Well, sometimes when she was here she keeps them here because when she goes to my home she has plenty of clothes there.

Q. You say you saw the suitcase the day before your mother-in-law was apprehended?

A. No, sir.

Q. You didn't? A. No, sir.

Q. When was the last time you saw it?

A. Oh, about a summer ago.

Q. That was the last time you saw it?

A. Yes, sir.

Q. Up to the time you saw it in the courtroom you never saw it again? A. No.

Q. Prior to the 9th of October when Mrs. Gonzalez was arrested, you saw your mother-in-law when?

A. She was with me all the time.

(Testimony of Carmen Gallardo.)

Q. Were you with her when you went to Westmoreland? [244]

A. I was in Westmoreland.

Q. You were what?

A. I was in Westmoreland.

Q. You were in Westmoreland. When did you come back? A. Do you mean down here?

Q. Yes.

A. Well, since this happened I have been coming down.

Q. I didn't hear you.

A. I say, since this trouble happened I have been coming down.

Q. Then you did not see her after the 5th of October, did you?

A. Well, she was—after the 5th of October—she took my little girl on the 5th of October. She got in that night and she was there until the 9th in the morning when she left. She was with me.

Q. When did she leave, did you say?

A. She left the 9th.

Q. At what time in the morning?

A. About nine.

Q. About nine o'clock? A. Yes.

Q. You don't know where she went after that, do you?

A. She was coming to Los Angeles to see the doctor.

Q. Where did she leave from in Westmoreland? [245] A. From my house.

Q. What is the address there?

(Testimony of Carmen Gallardo.)

A. We have no address. We just got the box number.

Q. Now, did you notice a suitcase when your mother-in-law came to Westmoreland?

A. There was no suitcase.

Q. She didn't take anything for her clothes at all?

A. No; she always keeps clothes in my house.

Q. What is that?

A. She always keeps clothes in my house.

Q. But I mean, in going on this trip you say as far as you can recall she did not have a suitcase along with her?

A. No; just my daughter's.

Q. You did not pay any particular attention to what she came along with, did you?

A. Well, I went to the back of the car to see if she had any suitcases at all or anything there, but she didn't have anything, just what belonged to my daughter is what she had there.

Q. Was the back of the car locked or was it open?

A. It was open.

Q. You don't know Mr. Santana?

A. No, I don't.

Mr. Mandel: That is all.

Mrs. Root: That is all. [246]

Mr. Binns: No further questions.

Mrs. Root: Mrs. Gonzalez, please.

The Court: I think we had better take our morning recess at this time.

The jury will bear in mind the admonition the court has heretofore given.

(Short recess.)

The Court: Will you stipulate the jurors are present in the jury box and the defendants are present in court with their counsel?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Let the record so show. You may proceed.

JOSEPHINE GONZALEZ,

a defendant herein, called as a witness by and in her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Josephine Gonzalez.

Direct Examination

By Mrs. Root:

Q. Now, Mrs. Gonzalez, it is important that we hear you, so keep your voice up so that we do not have any difficulty in hearing your testimony. [247]

A. Yes.

Q. You are a resident of where?

A. A resident of Westmoreland, California.

Q. And that is situated in the Imperial Valley?

A. Yes.

Q. And you live on what kind of a place?

A. I have a ranch about a half mile the other—northwest—north of Westmoreland.

(Testimony of Josephine Gonzalez.)

Q. And what do you raise there on the ranch?

A. Tomatoes and squash and cucumbers and banana squash.

Q. Vegetables? A. Yes.

Q. And how long have you been a resident there at Westmoreland? A. 15 years, going on 16.

Q. Do you own a trailer? A. Yes.

Q. And where is the trailer located?

A. It is located at 2722 Maple.

Q. Is that in Los Angeles? A. Yes.

Q. Los Angeles County? A. Yes.

Q. And the type and kind of trailer? Describe it.

A. It is a maroon with a cream top. It is a 1942 [248] Evanston and glider model.

Q. Well, I am particularly interested on the interior part of the trailer. Does it sleep one person or five persons, or how many?

A. Sleeps four people.

Q. Now, did you at any time rent that trailer to Mr. Santana, one of the defendants in this action?

A. I did.

Q. When and where?

A. It was on the 4th of October.

Q. And where were you when you rented the trailer to him? A. At my sister's house.

Q. And who were the persons present?

A. My husband, my sister, my grandchild and Mr. Santana.

Q. And did he pay you for the rental of that trailer? A. Yes; he gave me \$10.00.

(Testimony of Josephine Gonzalez.)

Q. What did he say to you about the rental of the trailer?

A. He wanted to rent it, but I didn't want to because——

Q. Don't tell us what he wanted to do. Tell us what he said.

A. He wanted a place where he could stay, a secure place and a nice neighborhood; that he was going to stay here for a while; he was going to purchase some trucks for his ranch and for his cotton. [249]

Q. Did he say anything about having money upon him?

A. Yes. He said he had quite a bit of money on him at all times.

Q. And at that time you rented the trailer?

A. Yes.

Q. Now, did you say anything to him about borrowing his Plymouth?

A. Yes. I asked him if I could borrow his Plymouth to take my grandchild home because she had to go home to school and he said I could.

Q. Was there anything said about delivery the Plymouth any place? A. No.

Q. Did you go to Mexicala to Mrs. Santana's home? A. No, ma'am.

Q. Did you tell Mrs. Santana anything relative to your being ill or about the return of the Plymouth? A. No, ma'am.

Q. And when you left on October 5th how long did you stay in Imperial Valley?

(Testimony of Josephine Gonzalez.)

A. I stayed in Imperial Valley from the 5th of October until the morning of the 9th of October when I come back to Los Angeles.

Q. What did you come back to Los Angeles for?

A. I was under the doctor's care. I was injured in and [250] automobile accident and I had to come back so I could make arrangements because they were going to pay for my hospital, the truck that wrecked my car was going to pay for my hospital and my doctor.

Q. And that accident was the accident that you had coming back from San Francisco on or about the 20th of September?

A. The 15th day of September at 4:30 in the morning.

Q. And that occurred where?

A. In the road at Rocky Ridge.

Q. And that was with a truck?

A. Yes, two trucks.

Q. Now, you were in the hospital sometime in between September 15th and October 5th, is that correct?

A. Yes, ma'am.

Q. Now, when you returned to Los Angeles on October 9th, where did you go, please?

A. I went direct to the trailer.

Q. And whom did you see at the trailer?

A. Well, I saw the neighbors there that have other trailers.

Q. What time did you arrive on October 9th at the trailer?

(Testimony of Josephine Gonzalez.)

A. Between two and three o'clock in the afternoon.

Q. And was Mr. Santana there? [251]

A. No, ma'am.

Q. Did you ever see Mr. Santana in a Dodge car?
A. Yes, ma'am.

Q. When was that, please?

A. That was on the 4th.

Q. Of October? A. Yes, ma'am.

Q. Where?

A. In front of my sister's house at 471 West 45th Street, Los Angeles.

Q. Did you know whose car that had been?

A. No, ma'am. He said he had recently bought it.

Q. And what car—what color was that Dodge car?
A. It is a blue sedan.

Q. Is there anything in this courtroom that gives you a color of blue that is like that blue that you saw?

A. More or less that gentleman's tie there.

The Court: Which gentleman are you referring to?

The Witness: I am talking of the juror—the blue in his tie.

Q. (By Mrs. Root) Which juror?

A. I don't know who he is. It is the one that has his finger——

Q. In the back row or front row?

A. In the front row, the lighter one—not the black [252] one, but the lighter one in between—yes, ma'am.

(Testimony of Josephine Gonzalez.)

Q. In other words, you know the difference between gray and blue, do you? A. Yes, ma'am.

Q. And it was a blue rather than a gray?

A. Yes, ma'am.

Q. Now, at any time did you ride in that Dodge car? A. No, ma'am.

Q. At any time did you place any opium and more particularly the can that is marked in evidence, wrapped in a towel or napkin?

A. No, ma'am.

Q. In that Dodge car? A. No, ma'am.

Q. Did you know that that opium was in that Dodge car? A. No, ma'am.

Q. Were you ever on the inside of that Dodge car? A. No, ma'am.

Q. Did you see the Dodge car other than in front of your sister's at any time thereafter?

A. I saw him park in the highway when we started for Imperial Valley on the 5th of October. It was not parked alongside of our trailer. It was parked on the highway and the door to the trailer was open and Mr. Santana was inside of the trailer.

Q. Did he have any of his clothes in there so far as you know?

A. Not on that particular day.

Q. I now show you Government's Exhibit 3 in evidence, and a key ring. Are these yours?

A. Yes, ma'am.

Q. And when in regard to the 9th of October did you have these keys?

A. I didn't have those keys at any time between

(Testimony of Josephine Gonzalez.)

the 5th and the 9th. They stayed in the trailer at all times.

Q. When did you put them in the trailer—these keys, Government's Exhibit 3 in evidence?

A. When I arrived in Los Angeles.

Q. And that was when, please?

A. The 20th day of July.

Q. 20th day of July? A. Yes, ma'am.

Q. And had you had those keys in your possession at any time between the 20th day of July, 1945, and October 9th? A. No, ma'am.

Q. And where did you pick up the keys from?

A. I picked them up on the afternoon of the 9th when I picked my suitcase. I put my keys in a pocketbook containing some papers that I needed for my insurance on my wrecked automobile and some soiled clothes and some cleaning that I [254] took to the cleaners.

Q. I show you Government's Exhibit, which is a suitcase marked Exhibit 2, and ask you if that is your suitcase? A. Yes.

Q. And when in regard to October 9th did you see it?

A. When I left it in the trailer. That was around the 21st or 22nd of September when I come from the hospital.

Q. And what was in the suitcase at that time, the 21st or 22nd of September, 1945, when you came from the hospital?

A. It had some soiled clothing and a skirt and a blouse and a black dress and two changes of underwear and a couple of stockings—a couple of pairs

(Testimony of Josephine Gonzalez.)

of stockings in the suitcase and it had our tools that were in our trailer. My sister-in-law took me to the Ridge and I picked up the tools and wrapped them in a newspaper and put them in my trailer in the suitcase.

Q. When was that?

A. That was about the 21st or 22nd of September.

Q. And is your sister-in-law's name Leonora M. Villalva?

A. Yes.

Q. Where do they live?

A. She lived at the time on Maple. She has left for Oakland.

Q. And she is now in Oakland? [255]

A. Yes, ma'am.

Q. And at the time you placed the tools in your suitcase did you lock it?

A. No, ma'am.

Q. I call your attention again to Government's Exhibit 3 in evidence, a key, and ask you if you maintained a key on this key ring that fits Exhibit 2 for the Government which is this suitcase?

A. Yes, ma'am.

Q. And did you at any time previous to October 9th use that key in this suitcase, more particularly from July of 1945 to October 9th?

A. No, ma'am.

Q. At the time that you left the suitcase was it locked?

A. No, ma'am.

Q. At the time that you left the suitcase in the trailer did you use the key that is on the key ring to the suitcase?

A. No, ma'am.

(Testimony of Josephine Gonzalez.)

Q. When did you take the tools from Government's Exhibit 2, which is the suitcase?

A. On the afternoon of October 5th.

Q. Who was present?

A. My husband and Mr. Santana and myself.

Q. The reason for taking the tools was what, please?

A. Because my husband said that Mr. Santana's jack was broken and the tires were pretty bad. Mr. Santana had said the tires probably would not last us on the trip and if we had any trouble we would have to change the tires.

Q. Where was Mr. Gonzalez and yourself and Mr. Santana when the jack was taken out of the suitcase?

A. In the trailer.

Q. And the suitcase was there in the trailer?

A. In the trailer.

Q. As well? A. Yes, ma'am.

Q. When you took the jack out of the suitcase what did you do with the suitcase?

A. I put the suitcase under Mr. Santana's bed. That was closer to the door. I had one bed on this side and I had made the extra bed where I have my dining room table. I had made that into a bed for Mr. Santana. I pushed it underneath open, containing some steel wrenches and jack—that jacks the wheels of the trailer to hitch it onto the car.

Q. Were those tools, all of them while they were in the suitcase, wrapped in paper?

A. Newspaper, Los Angeles paper and the Newhall paper.

(Testimony of Josephine Gonzalez.)

Q. So that at no time while the suitcase contained the [257] tools to your knowledge were the tools left without being wrapped in the suitcase?

A. Yes, ma'am.

Q. Where did you leave the keys in the trailer?

A. Right on top. There is a mantle that is over my range and they were there, and I had a pitcher and I had a jar there and a scarf and it was right there on top of the mantle at all times.

Q. I now show you Government's Exhibit 15 for identification, which is a picture of Mr. Gonzalez, Mr. Santana, and some other person. I show it to you and ask you if you last saw—where it was that you last saw the picture?

A. The last time I saw the picture was that night that Mr. Beckner took it away from me, from my pocketbook.

Q. Was it in the trailer?

A. Yes, ma'a'm, along with my other papers and—

Q. Now, when you arrived at the trailer on October 9th at about the hour of 2:30, not night time, but afternoon—I will withdraw the question. When you arrived at the trailer on October 9th, in the afternoon, at about 2:30, what else did you take out with the suitcase, if anything?

A. I took out some soiled clothing. I put it in a pillowcase and some cleaning which I took to the Monterey Park Cleaning Company, and my purse with my papers, my key ring, the pictures that were there on top of the mantle that [258] my husband

(Testimony of Josephine Gonzalez.)

had brought from San Francisco and some magazines.

Q. And where did you go from there?

A. I went to the cleaning establishment and left the cleaning there.

Q. Where did you go from there?

A. From there I drove to the drugstore and had lunch.

Q. From there where did you go?

A. Then I come back to the trailer and waited for Mr. Santana quite a bit.

Q. Then where did you go?

A. Then I stayed there and Mr. Santana at no time showed up. I finally decided that I had better go to the corner gasoline station and have the car completely serviced as to gas and oil and air and water so I could return it to Mr. Santana when he come back.

Q. Where did you go after that?

A. After that I returned to the trailer and waited a while and Mr. Santana did not show up. In the meantime when Mr. Santana rented my trailer I had asked him that if he should go—he didn't say for how long he wanted my trailer, so I said if he should at any time leave he could leave the keys with my landlady. I went from there to my landlady and asked her——

Q. Don't tell us the conversation. You went to the landlady. Then what did you do? [259]

A. Asked her if the gentleman that had my

(Testimony of Josephine Gonzalez.)

trailer rented had left my keys and she said "No," that she had not seen him.

Q. All right, then where did you go?

A. From there I come back and I sat in the car. From there I went inside of the trailer and had some newspapers and sat there for a while. Then it was getting cold. I didn't have any coat or anything like that. I went to the wardrobe and got a heavy woolen robe.

Q. And that was about what hour of the day or night on October 9th?

A. It was getting dark at the time. I don't know. Mr. Santana didn't keep any time. My clock in the trailer wasn't running and I didn't know, but it was getting dark.

Q. Now, at any time that you had taken the suitcase at about 2:30, which is marked Government's Exhibit 2, did you lock it in the back of the car? A. No, ma'am.

Q. Was your car locked at any time?

A. No, ma'am.

Q. When you went into the cleaners did you lock the car? A. No, ma'am.

Q. When you went into the drugstore did you lock it? A. No, ma'am. [260]

Q. So that at all times the clothing, the suitcase, your papers which were down in the floor portion of the back part of the car, which was in front of the back seat of the car, it was without any lock?

A. Yes, ma'am; and the windows were down.

(Testimony of Josephine Gonzalez.)

Q. Now, after you left the trailer for the last time what time was it?

A. Well, the officer said it was around nine o'clock.

Q. And that is to the best of your knowledge?

A. Yes, ma'am.

Q. And you went where?

A. From there I come to Los Angeles and from there got the route to San Fernando to go and visit my sister, to go over to my daughter's in La Canada.

Q. And then what happened?

A. When I arrived at my daughter's house in La Canada there was nobody home, so I come and sat in the back part of the car and sat there for a while. When the officer arrived I didn't know who he was. It was a car with different ones, so I got off the back and sat in the front. I didn't know who they were.

Q. What did you do when the officers first approached you?

A. They asked me whose car it was and I told them it belonged to a party that had my trailer rented in Monterey [261] Park.

Q. What else was said?

A. And they asked me if I had permission to drive it, and I said, "Yes," and they said how did they know—there was no registration in the car any time, and I told them they could very well telephone and ask Mr. Santana if I didn't have his permission to drive the car.

(Testimony of Josephine Gonzalez.)

Q. Then what happened?

A. Then they proceeded to search the car and got my clothes and my belongings and went through them. They picked the suitcase—I was sitting in the front part of the car and they opened the door and set the suitcase in the back and they asked me whose suitcase that was and I said it was mine. They tried to open it and it was locked. I told them that it was not locked. They said, "Well, it is," and Mr. Beckner asked me for the keys, if I have the keys, and I said, "Yes." I went into the extra purse that I had picked up from my trailer, opened it, and he asked me which key it was and I singled it out and gave it to him. When he opened it he said there was opium there. I said I didn't know—I did not know such a thing, if there was such a thing like that, that it belonged to Mr. Santana or Mr. Santana had put it there, because the last time I had seen my suitcase it contained the tools for my trailer.

Q. You told him that at that time? [262]

A. Yes.

Q. Isn't that correct? A. Yes.

Q. Were you asked by Mr. Beckner or any other officer when you took the suitcase, Government's Exhibit 2, from the trailer?

A. They did not tell me at what time. I told them that I had picked up my suitcase and my clothing and my soiled clothing from the trailer. They said that I couldn't have had it because I was being watched from seven o'clock on. I told them

(Testimony of Josephine Gonzalez.)

that in that case how did I happen to have my cleaning bill, a receipt for a cleaning bill of that date and he said I had not arrived in the trailer before 7:30 that evening.

Q. Did you show him the ticket for your cleaning?
A. Yes, ma'am, I did.

Q. Did you suggest to him or state to him that he could check or verify that you did leave your cleaning at the cleaning establishment at about two or three o'clock?
A. Yes, ma'am.

Q. What did he say as to that, if anything?

A. He said that he was going back to see Mr. Santana and he said, "Where can he be found?" and I said, "I am almost sure he is in the trailer; but he was not there the last time I left." [263]

Q. Did you then leave that place at La Canada and go to the trailer?

A. They put me in the car and drove me there.

Q. And when you arrived at the trailer was Mr. Santana there?

A. I did not see Mr. Santana because they kept me about, from two to three hundred feet away from the trailer, parked alongside of my landlady and an officer was with me.

Q. Now, I call your attention to the opium cans marked, which I believe are marked—I believe there are 16 in number and a jar, which the testimony has been contains some opium and ask you if you have even seen any of the cans, the contents of the containers or any portion thereof?

(Testimony of Josephine Gonzalez.)

A. I have seen it in the State court when they went there as State evidence.

Q. At any previous time?

A. No, ma'am. At the time of my arrest they did not show me them. They showed me when they found Mr. Santana's wrapped in a napkin. They come around and showed it to me but at no time did I see any of the contents of the 16 cans.

Q. So that the first time you saw the exhibit was when you were in the State court, is that correct?

A. Yes, ma'am.

Q. There was talk as between you and the officers, however, on the night of October 9th at the time of your [264] arrest and at the time that the officers opened the suitcase, that the suitcase did contain opium?

A. Yes, ma'am.

Q. Of which you made an answer how, please?

A. He said that it had 16 cans of opium and I told him it didn't have no such thing; that I at no time knew it contained opium; that the last time I had seen my suitcase was on the 5th of October when I had gone home and had left it in the trailer. At that time it contained my tools to my trailer.

Mrs. Root: Gentlemen, you may cross examine.

Cross Examination

By Mr. Binns:

Q. How long have you known Mr. Santana?

A. I have known Mr. Santana since November a year last November.

Q. How many times have you seen him since then?

(Testimony of Josephine Gonzalez.)

A. Oh, I have seen him about—well, about, less than a dozen times I should imagine, when he came to our ranch..

Q. And how many times did you go over to Mexicala to his place?

A. I went with my husband a couple of times to the bull ring in Mexicala the summer before last—not this summer.

Q. And did you see Mr. Santana there? [265]

A. Yes. My husband stopped to talk to him and I sat in the car.

Q. You say that was the summer before last?

A. No—I don't mean it that way, your Honor. I mean during the bull fight season. That is before last summer.

Q. That would be before last summer?

A. Yes, before last summer.

Q. Was it as far before as the summer before that?

A. No, sir; because I didn't know Mr. Santana then. I didn't know him until November.

Q. And did Mr. Santana go to San Francisco with you and your husband in September of last year?

A. He did.

Q. Do you remember having a conversation with Mr. Polcuch, the gentleman who sits behind me?

A. Yes, I did.

Q. Did you tell him that you had gone to San Francisco with Santana?

A. I had not.

D. Did you tell him that you had gone with Santana?

(Testimony of Josephine Gonzalez.)

A. It wasn't brought up about San Francisco at all. It was just brought up when my husband come back from San Francisco.

Q. I see. Do you remember having a conversation over in the Hall of Justice with Mr. Beckner?

A. Yes, I did.

Q. Did you tell him that you went to San Francisco with Santana? A. I did not.

Q. You say that that trip was not brought up over there either? A. No, sir.

Q. Nothing was said about that trip?

A. No, sir.

Q. I will ask you, didn't you tell Mr. Polcuch that you and your husband met Santana in San Francisco?

A. I told Mr. Polcuch that Mr. Santana had gone to San Francisco the day that I had left San Francisco. That was the 14th day of October in the afternoon.

Q. I did not understand your answer. Will you tell me again?

A. I told Mr. Polcuch that Mr. Santana had gone over to my brother's house on the 14th day of September. That was the day I left San Francisco for Los Angeles.

Q. I see. You did not tell Mr. Polcuch that Mr. Santana had gone up there with you?

A. I did not.

Q. Now then, calling your attention to Government's Exhibit No. 3, you say those are your keys?

A. They are. [267]

(Testimony of Josephine Gonzalez.)

Q. Well, will you please tell the jury for what each of those keys is?

A. This key here belongs to my front door of my ranch house. This one here belongs to the Chevrolet that was wrecked. This one here belongs to the front door of the trailer. This one here belongs to my little night bag where you keep your cosmetics.

This one here—these here belong to another large suitcase that I keep at the ranch. It is rather a kind of streamer truck, I would call it. It is not a suitcase and the suitcase is not here, but I do not recall this key. I do not recall what that key is for.

Mrs. Root: I wonder if we could have that one marked separately?

The Court: It is a small key.

The Witness: It is a key but I don't know what it is for.

Mrs. Root: Let us get the relative position of the keys on the key ring for a description. Otherwise it does not mean anything on the record.

The Court: It is in the same group as the car keys.

The Witness: It is, the car and my ranch house.

Q. (By Mr. Binns) You say at the time you gave that key container to the officers the key to the suitcase was also on there? [268]

A. It was.

Q. Now then, were you in your trailer in July of 1945?

A. I was.

(Testimony of Josephine Gonzalez.)

Q. And you say at that time you left those keys there? A. Yes, I did.

Q. And did you come back to your trailer again at any other time in July?

A. I lived in it until the time we went to San Francisco.

Q. I see. And you lived in the trailer at that time? A. I did.

Q. And did I understand you to testify you never saw the keys from July until October 9th?

A. That wasn't what I said. I said that they had been in the trailer at all times since that date.

Q. From July until October 9th they had been in the trailer.

A. Yes, sir; at all times.

Q. Did you ever take them out and use them?

A. No, I did not.

Q. Where were they in the trailer?

A. They were on top of the mantle, on top of my stove.

Q. Did you ever go back to the Valley from July until October? A. I did. [269]

Q. How many times? A. Once.

Q. Did you take the keys with you?

A. No, sir, I did not.

Q. Did you say the front door key to the Valley ranch house is there?

A. I have no necessity of carrying my keys around because my husband was at home.

Q. Now then, do you know Luis Ramon Gonzalez?

(Testimony of Josephine Gonzalez.)

A. I do not. I know Ramon Gonzalez.

Q. Is his first name Luis?

A. No, it is Ramon.

Q. Do you remember having a conversation with Mr. Polcuch?

A. Yes. I told him that it was—that Ramon Gonzalez had his Christian name—his Christian name was not Luis Gonzalez—it was Ramon Gonzalez. In the Mexican custom it is the name that you are and the day that you are born—that is the name that they should go by.

Q. Was his Christian name Luis Ramon Gonzalez?

A. No, his Christian name is Ramon Gonzalez.

Q. Where does the Luis come in?

A. That is he was born in the day of San Luis Obispo.

Q. Showing you 15 for identification, I indicate this gentleman sitting in the middle. Is that Ramon Gonzalez? [270]

A. He is.

Q. Who, you say, was born on San Luis Obispo?

A. Yes.

Q. Do you know Luis Villalva? A. I do.

Q. How do you pronounce his name?

A. Villalva.

Q. Do you know where he is now?

A. I do not.

Q. Is he up in Oakland with his wife?

A. I hardly believe so.

Q. Now then, do you remember the conversation

(Testimony of Josephine Gonzalez.)

you had with Mr. Polcuch upstairs in the Hall of Justice? A. Yes, sir.

Q. Did you tell him that you and your husband, Alfonso Gonzalez, had taken the tools out of the suitcase and had placed them in the back of the Plymouth?

A. No, sir, at no time. I told him we had taken the jack and Mr. Beckner gave me a jack that I asked for, but he did not give me my jack. He gave me Mr. Santana's jack after it had been repaired.

Q. Now, do you remember going to Mr. Beckner's office and asking him for some tools?

A. Yes, I did go to Mr. Beckner's.

Q. And do you remember him taking you out to the [271] Plymouth and opening the back of it?

A. He did not.

Q. He did not take you out to the Plymouth?

A. No, sir.

Q. Do you remember asking him for your tools which were in the back of the Plymouth?

A. Yes.

Q. And do you remember him telling you that he could give you one jack because there were two there?

A. No. He said he had to ask permission first to see if I could get it—he didn't know whether it belonged to the car.

Q. Now then, what other tools did you have in that Plymouth besides the jack?

A. It was the pliers?

Q. Is that all?

(Testimony of Josephine Gonzalez.)

A. It was some pliers and it was—I don't know the name of it, but it is the one that you tighten the wheel with.

Q. Have you ever heard the name "lug wrench"?

A. No.

Q. The one you tighten the nuts on the wheel with?

A. Yes.

Q. And what else?

A. That was all. [272]

Q. And were those all tools that you had taken out of your Chevrolet?

A. Yes.

Q. And those were all tools which had been in your suitcase?

A. Not all of them.

Q. What else was in there?

A. There was some steel wrenches that my husband uses on the ranch and the jack for the wheel for the front part of the trailer that you have to raise so you can hitch it on the car.

Q. And those were still in your suitcase?

A. Yes, sir.

Q. What kind of lug wrench was this? Was that one of the ones that is shaped like a cross?

A. It was—I guess so. It was a four-way wrench.

Q. About that big (indicating)?

A. Yes.

Q. And then you say there was a jack?

A. Yes, sir.

Q. A jack about that tall?

A. About that tall (indicating).

Q. And then you——

Mrs. Root: "That tall" for the record is what, please, counsel? [273]

(Testimony of Josephine Gonzalez.)

Mr. Binns: Indicating the first time about eight inches and the second time about two feet.

Q. How long do you say it was?

A. Well, I don't know, two feet.

Q. Can you indicate with your hands?

A. About that big (indicating).

Q. Would you say it was about a foot, counsel?

Mrs. Root: I expect a little over that.

Q. (By Mr. Binns) Then you say there was another jack for the trailer?

A. It is not a jack—it is one that you raise your wheel with. They call it a jack. I don't know what you call them.

Q. You mean you use that to raise the front end of your trailer so it will attach to the bumper of your car?

A. Yes, sir.

Q. Now, will you please show us how large that is?

A. That is curved like that.

Q. You say it is about eight inches?

A. No, it is about that big.

Q. It is about two feet?

Mr. Binns: Will you stipulate it is about two feet, counsel?

Mrs. Root: That is what she so indicated.

Q. (By Mr. Binns) Then you say there were some [274] wrenches?

A. Yes.

Q. What size wrenches were they?

A. About that size.

Q. Indicating about a foot?

Mrs. Root: So stipulated.

(Testimony of Josephine Gonzalez.)

Q. By Mr. Binns: And how many of those wrenches were there?

A. There was two of them.

Q. And then you say there were some pliers?

A. Yes, sir.

Q. Now, did they have any tire irons? Do you know what a tire iron is? A. No.

Q. Were there any pieces of metal which you use to take a tire off and put on a rim?

A. No, sir.

Q. Did not see anything like that?

A. No, sir.

Q. Were there any other tools that you can remember?

A. Well, there was a hammer—a hammer and a screwdriver.

Q. Was there anything else?

A. And the jack for the trailer, and they want to raise the hitch on the trailer. [275]

Q. There was another trailer jack besides the one that raised the hitch, is that it?

A. Yes, sir.

Q. That was for a flat tire on the trailer, is that it? A. Yes, sir.

Q. How big was that jack?

A. That is the one I was telling you about. It was about that big.

Q. Now then, was there a jack that you had also taken out of your Chevrolet?

A. No. I left the tools—the tools that belonged

(Testimony of Josephine Gonzalez.)

to the Chevrolet I left them in the Chevrolet because the company was going to pay me for it.

Q. You didn't take all the tools out of the Chevrolet then?

A. No, not the ones that belong in the Chevrolet—just the ones that belonged to the trailer.

Q. Can you think of any other tools you had in that suitcase?

A. I didn't have but the jack—I took it out and the pair of pliers from the suitcase. That is all—that is the extent that I took from the suitcase.

Q. And you say you wrapped all those in a newspaper?

A. In the Examiner and the Newhall paper that I had [276] bought while I was in the hospital.

Q. And you wrapped them all in one bundle?

A. Yes.

Q. And then you put them in there?

A. Yes; just folded them up so they wouldn't get my suitcase soiled.

Q. And then when you and your husband opened it to take these tools out you opened the bundle?

A. I just removed the paper to one side and took out one jack and one pair of pliers and that was all.

Q. Then what did you do about the bundle?

A. I just pushed the suitcase and put it under Mr. Santana's bed.

The Court: Opened or closed?

The Witness: Closed.

Q. By Mr. Binns: Calling your attention to

(Testimony of Josephine Gonzalez.)

the trip that you and your husband made to San Francisco in the first part of September, did Mr. Santana go with you? A. He did.

Q. And he went with you from San Fernando to San Francisco? A. He did.

Q. And did you stop in Fresno?

A. We stopped in Fresno and had lunch; and he—he had said from here when my husband come that way—that was the first part—he come Saturday night with Mr. Santana [277] and the following day was Sunday and was a holiday and the following day would be Labor Day, so when he come I asked him—I have never seen a Labor Day before and they were having one of the famous generals—one of the famous generals was going to be in it and I asked if he wouldn't take me and he said he had come with Mr. Santana; that Mr. Santana was going to buy some trucks and he was going to help him drive them back, and I asked him that everything would be closed that day, being Sunday, and the following day being Labor Day, if he wouldn't take me to San Francisco to see my brother, which I haven't seen for years and he said he would.

We started out and Mr. Santana said he was going to put his car in a garage and going to get tires, which everything was closed. He started back—we stopped and we told him that we were going to San Francisco. He said that he was going too, Los Angeles being closed all Sunday and Monday he couldn't do anything—couldn't shop, so he wanted to go and see his godfather, a party by the

(Testimony of Josephine Gonzalez.)

name of Pete that owed his quite a bit of money; that he might as well go and collect it. Close to San Fernando he stopped us and told us if we didn't mind him going along with us because his tires were pretty bad. He drove up and left his car parked and got in our car; and when we went we weren't figuring on going by Fresno Valley; we were going the other way and we went to Fresno and stopped in Fresno and had lunch and from there we went some [278] six miles or so on one side of Mendota and he stopped in a big ranch where they had some cabins and a court and trees and lots of cars and big trees. We stopped the car in front of that big shade there and we walked in and he directed us all around—directed us to the road there. It was country roads and ranches and took us to this big farm there and stopped and we parked our car. He went on straight to a cabin to find Mr. Pete, the party that owed him some money. He stayed there quite a bit and he come back and he told us that that party was not there; that they told him he was in Viola or some such name.

He wanted my husband to go back to Fresno and see if he could find him. When we got to Fresno he did not mention his godfather any more or like you say in Spanish "compadre." He did not mention his compadre but he did talk an awful lot of this Pete that owed him money. He wanted my husband to go to Fresno and he was almost sure he could find this Pete's car and he was coming back with Pete to Los Angeles.

(Testimony of Josephine Gonzalez.)

I did not want to go to Fresno because I don't believe in turning back when I am on the road and I told him that if he wanted to go and look for this Pete why didn't he have one of the parties there in the ranch—there was a lot of cars, take him back and to let us go and proceed on to San Francisco, because I was very anxious to see the parade the following day. He said that as far as we were going to San [279] Francisco he would go on too, because he could always get in touch with Pete in Oakland and he had his brother in—I don't recall the name.

The Court: We are not interested in all of the details of the trip.

Mr. Binns: No.

Mr. Mandel: I was going to object to it but I——

Mr. Binns: I am not interested in it, your Honor.

Cross-Examination

By Mr. Mandel:

Q. Mrs. Gonzalez, when you went to San Francisco with Mr. Santana and your husband you stopped for a short time in Fresno. Without going into any dissertation, you stopped there about an hour, is that right?

A. Long enough to have lunch and have the car serviced.

Q. Then you went on your way to San Francisco?

A. No, sir. We went from there to Mendota.

(Testimony of Josephine Gonzalez.)

Q. How long did you stay there?

A. Just long enough——

The Court: What materiality has this, counsel?

Mr. Mandel: I don't want to go into detail.

The Court: They went to San Francisco.

Q. By Mr. Mandel: You arrived in San Francisco then and then you went where in San Francisco?

A. I went direct to my brother's house at 198 [281] Harriett.

Q. Do you know whether Mr. Santana remained with your husband at that time?

A. How could he when my husband——

Q. I am asking you if he did or he didn't?

A. He did not.

Q. Before you went on the trip from Los Angeles to San Francisco did you take any suitcase along? A. Yes, I did.

Q. That is the suitcase you took along, isn't it?

A. Yes, sir.

Q. And you took that and that was in your Chevrolet car? A. Yes, sir.

Q. You did not take these keys, the set of keys that have been mentioned here that fit your trailer and other—— A. I have them right here.

Q. Did you take these along with you when you went to San Francisco? A. I did not.

Q. Where did you leave that?

A. They were at all times in the trailer.

Q. Where in the trailer?

A. In front of the mantel.

(Testimony of Josephine Gonzalez.)

Q. And the suitcase was locked or was it open when you took it along? [281]

A. I never have locked my suitcase.

Q. All right, it was open on this occasion?

A. It was open; yes, sir.

Q. When you left San Francisco you went—you left with the Chevrolet alone, is that right?

A. Yes, sir.

Q. Left your husband up north with Mr. Santana? Mr. Santana remained up in San Francisco with your husband?

A. When was that?

Q. When you left San Francisco some time in September 1945 you left in the Chevrolet car and you left your husband there, did you not?

A. Yes, sir.

Q. All right. At that time you took along the suitcase with you, did you not?

A. Yes, sir.

Q. And the suitcase—what did it have—what possessions did it have?

A. I beg your pardon?

Q. What did you have inside the suitcase when you went from San Francisco down south?

A. You mean when I left San Francisco for Los Angeles?

Q. That is what I said.

A. I had my coat, a black dress, the shirt and the [282] blouse I was wearing. I had another extra black dress and two changes of underwear and two pairs of stockings.

Q. The—besides the personal apparel you had nothing else other than tools of any kind, did you?

(Testimony of Josephine Gonzalez.)

A. No, sir.

Q. Did you ever at any time have any jack in the suitcase before you made the trip to San Francisco? A. No, sir.

Q. Never had any tools before, did you, in the suitcase? A. No, sir.

Q. All right. Then when you went south you met with an accident? A. Yes.

Q. Your car was wrecked? A. Yes, sir.

Q. And then after you asked your husband or telegraphed your husband that you needed a car, is that correct? A. No, sir.

Q. You told your husband about the accident, that your car was completely wrecked?

A. I phoned my husband and I told him I had met with an accident.

Q. And that you were apparently on the way to recovery, is that right? [283] A. No, sir.

Q. You did not tell him that? A. No, sir.

Q. That you were about to leave the hospital, maybe in a few days?

A. I told him that I was not very seriously hurt and that I would be there for observation—they had taken X-rays and——

Q. Let us forget about the details. You told him you were well enough to go out of the hospital within a few days, is that correct?

A. Yes, sir.

Q. Then you picked up the Plymouth car in San Fernando, didn't you? A. I did not.

Q. Well, where did you get the Plymouth car?

(Testimony of Josephine Gonzalez.)

A. Mr. Santana's brother-in-law brought it to me, to the trailer on Sunday morning after I had left the hospital.

Q. The brother-in-law? Whose brother-in-law?

A. Mr. Santana's brother-in-law.

Q. Where does he live?

A. In Mexicali with Mr. Santana.

Q. I am speaking of San Fernando, California.

A. Yes; you are talking about San Fernando, California, and I am telling you that Mr. Santana's brother-in-law [284] brought the car to me to the trailer.

Q. Do you mean when you returned from the hospital?

A. When I was in the trailer after I had gotten out of the hospital.

Q. When was that?

A. About the 21st or 22nd of September.

Q. And where did you say you met Mr. Santana's brother?

Mrs. Root: Brother-in-law.

The Witness: Brother-in-law. He had brought the Plymouth car to me in the trailer.

Q. By Mr. Mandel: And where?

A. In Monterey Park.

Q. Where does his brother-in-law live?

The Court: She answered that by saying in Mexicali.

Q. By Mr. Mandel: That is what I am trying to find out. His brother-in-law lives in Mexicali. When did he come to Los Angeles?

(Testimony of Josephine Gonzalez.)

A. May I answer you?

Q. That is what I am trying to get at.

A. Well, when I asked the Prosecuting Attorney or the United States Marshal or these gentlemen here that Mr. Santana had come to my brother's house the 14th of September, when I left my brother's house for the Valley that Mr. Santana had come to my brother's house at that particular day. He gave me an address and asked me if I wouldn't pick [285] his brother-in-law—he didn't call him his "brother-in-law" at the time. He said his nephew and his nephew's wife in Sanger, California. I went there and asked the night Marshal, a gentleman from Missouri, where this particular address was. He said, "Who are you looking for?" And I said, "Well, to be exact, I don't know, but," I said, "I am supposed to pick up a couple in San Fernando," and if you check at the highway patrol at the time of my accident you will see that Mr. Garcia and Mr. Gregory Garcia were in my company at the time of my accident.

Q. What date are you speaking of? Before the accident?

A. I am talking about the 15th of September at 4:30 in the morning when I met an accident.

Q. I know——

The Witness: You are all confused because at the time——

Q. I am not trying to be confused.

A. At the time Mr. Santana left with my husband for Los Angeles he left his brother-in-law in

(Testimony of Josephine Gonzalez.)

Brawley and his brother-in-law showed up in San Bernardino.

Q. Mrs. Gonzalez, I am not trying to confuse you and I don't want to be confused and I don't want the jury to be confused.

The Court: Let her tell her story.

Q. By Mr. Mandel: Mrs. Gonzalez, on the 14th of September, the date you are mentioning, where were you? [286]

A. In San Francisco.

Q. All right. You left San Francisco when?

A. I left in the afternoon, early in the afternoon, about midday I should say.

Q. Did you tell Mr. Santana you were leaving San Francisco?

A. I did not; he come to me.

Q. Then you left?

The Court: Let her finish her answer.

Q. By Mr. Mandel: What was the rest of your answer?

A. My husband evidently——

Q. I ask that be stricken.

A. My husband must have told Mr. Santana before that——

Mr. Mandel: I object to that.

The Court: Wait just a minute.

The Witness: If you don't want me to tell you——

The Court: This witness is trying to answer your questions. I think I understand what she is trying to say. She is telling us she left there and that Santana had given the address of certain people at Sanger, and that two people from Sanger

(Testimony of Josephine Gonzalez.)

were with her in the car at the time of the accident.

Now, is that what you tried to tell counsel?

The Witness: Yes, sir.

The Court: And that is what you did tell us?

The Witness: Yes, sir. [287]

Q. By Mr. Mandel: And that was when, did you say?

A. That was the 14th of September when I left San Francisco and the accident was on the 15th of September at 4:30 in the morning.

Q. Now, when did you pick up the Plymouth car, did you say?

A. I did not pick the Plymouth car up.

Q. When did you get it?

A. I didn't get it until the 21st or 22nd of September at my trailer court.

Q. And who brought it there?

A. Mr. Santana's brother-in-law.

Q. What is his name?

A. Gregory. They call him Julio.

Q. Is that the one you mean was in Mexicali?

A. Yes.

Q. All right. Now then, from that time on until the day of the arrest you had the Plymouth car in your possession?

A. From the 21st or 22nd until Mr. Santana's arriving it was parked in front of my sister's house where Mr. Santana's brother-in-law had parked it. At that particular Sunday morning when he took me down to my sister's house, when he come down he asked me if he couldn't leave the car there and

(Testimony of Josephine Gonzalez.)

Mr. Santana on his way back would pick it up. I told him I could not because I was on my way to my sister's— [288] I couldn't take care of myself and I had to go to my sister's, and he said, "Well, when are you going?" And I said, "I expect to go today." He said, "Well, I will take you." He took me and drove me up there and he asked me if he could leave his car over at my sister's. I told him my sister did not have a yard, did not have a garage and he said it would be all right, the neighborhood looked respectable enough that the car would not be stolen from in front of the street and there is where it was parked until Mr. Santana's arrival.

Q. You mean some time in October of this last year, October 3rd or 4th?

A. I am talking about September 21st or 22nd.

Q. But Mr. Santana's arrival——

A. He did not say when Mr. Santana was coming back.

Q. I am saying it has been testified to as around October 30th—September 30th? A. Yes.

Q. Is that about the time your husband returned from San Francisco? A. Yes, sir; the 4th.

Q. Was that the first time you saw the Dodge car of Mr. Santana's, or did you see it in San Francisco?

A. I never saw the Dodge car in San Francisco.

Q. You saw it in Los Angeles?

A. Yes, sir. [289]

(Testimony of Josephine Gonzalez.)

Q. And when you saw it you say that you remember the car as a blue car? A. Yes.

Q. Could it have been viewed as a gray car?

A. It is not.

The Court: That has been asked and answered, counsel?

Mr. Mandel: All right.

Q. Now, when you took the car from Los Angeles to the Valley, the Plymouth car I am speaking of—now, you say you did not go to Mrs. Santana's place in Mexicali? A. I did not.

Q. You never talked to Mrs. Santana then?

A. I have not.

Q. You did not tell her that you were too ill to leave the car that day—you would come the following day? A. I did not.

Q. Nor did you talk to her and go on foot to Mexicali, did you? A. I have not.

Q. And she is not telling the truth, is that right?

A. She is not.

Mr. Binns: I think that is argumentative.

The Court: He has an answer.

Q. By Mr. Mandel: Now then, the large keys that you have before you there that fit your trailer were found in [290] your possession at the time of your arrest, is that correct?

A. The key ring was found in my possession.

Q. When you went to the trailer after you returned from the Valley, some time you say around two or three in the afternoon of the 9th, you went

(Testimony of Josephine Gonzalez.)

to the trailer. Did you pick up the suitcase at that time? A. I did.

Q. Did you pick up the keys at that time?

A. I did.

Q. Were they in the same place that they were before?

A. They were at all times in front of the mantel place.

Q. They had not been touched?

A. Well, I would not say that.

Q. Well, I am asking you, did you find them in the very same spot they were in?

A. They were on top of the mantel, not exactly the same place.

Q. How far was it from where it was when you saw it?

A. Well, it was closer to the sink than it was to the stove when I picked them up, but it is all one large mantel.

Q. Well, it was in the general area where you saw it in July of 1945? That is, the last time you said you saw it?

A. I did not say I saw them the last time.

Q. The last time you had them in your possession that was about the same place, same area as it was when you took [291] the keys—when you took the suitcase along with you on the 9th, is that correct?

A. It wasn't the night of the 9th; it was the afternoon of October—

(Testimony of Josephine Gonzalez.)

Q. Well, the 9th of October, I say, in the afternoon?
A. Yes.

Q. Is that right?
A. Yes.

Q. You took the suitcase and you also took the keys, is that right?
A. Yes, sir.

Q. I understand from your answer that before you say the suitcase was locked when you took it out on the afternoon of October 9th, is that right?

A. I do not, no, and I did not know at the time it was locked.

Q. Well, you took it out from the trailer and brought it into your car, didn't you?

A. I did.

Q. And you put the suitcase where you took it out of the trailer?
A. Inside of the car.

Q. You didn't put it in the back of the car?

A. No.

Q. And you did not open it? [292]

A. I did not.

Q. You did not try to examine its contents?

A. I did not.

Q. You did not know what it contained then?

A. I thought it was my tools that I had there at all times.

Q. Well, what was your object in taking the suitcase at that time?

A. Because I was going over to my sister's, and I was going to stay. I didn't know just how long Mr. Santana was going to keep the trailer and I had quite a bit of cleaning and quite a bit of soiled clothes that I took along with me, and some papers

(Testimony of Josephine Gonzalez.)

to the trailer. Did you pick up the suitcase at that time? A. I did.

Q. Did you pick up the keys at that time?

A. I did.

Q. Were they in the same place that they were before?

A. They were at all times in front of the mantel place.

Q. They had not been touched?

A. Well, I would not say that.

Q. Well, I am asking you, did you find them in the very same spot they were in?

A. They were on top of the mantel, not exactly the same place.

Q. How far was it from where it was when you saw it?

A. Well, it was closer to the sink than it was to the stove when I picked them up, but it is all one large mantel.

Q. Well, it was in the general area where you saw it in July of 1945? That is, the last time you said you saw it?

A. I did not say I saw them the last time.

Q. The last time you had them in your possession that was about the same place, same area as it was when you took [291] the keys—when you took the suitcase along with you on the 9th, is that correct?

A. It wasn't the night of the 9th; it was the afternoon of October—

(Testimony of Josephine Gonzalez.)

Q. Well, the 9th of October, I say, in the afternoon?
A. Yes.

Q. Is that right?
A. Yes.

Q. You took the suitcase and you also took the keys, is that right?
A. Yes, sir.

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Q. And you did not open it? [292]

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Q. Well, what was your object in taking the suitcase at that time?

A. Because I was going over to my sister's, and I was going to stay. I didn't know just how long Mr. Santana was going to keep the trailer and I had quite a bit of cleaning and quite a bit of soiled clothes that I took along with me, and some papers

(Testimony of Josephine Gonzalez.)

I needed in regard to the wreck of my car, for the insurance.

Q. You did not take the suitcase along with you when you went from Los Angeles to the Valley, but you did take it on the day of the 9th of October when you went to the trailer?

A. Well, I did not need my suitcase in the Valley, because——

Q. Not whether you needed it, but you didn't take it? A. No, sir.

Q. But you did positively take it, you say, on the afternoon of the 9th along with these keys?

A. Yes. [293]

The Court: At this time we are going to take our afternoon recess. The jury will bear in mind the admonition the court has heretofore given. We will take a recess until 1:30.

(Whereupon, at 12:00 o'clock noon a recess was had until 1:30 o'clock p. m. of the same day.) [294]

The Court: Are you ready to proceed?

Mr. Mandel: We are ready, your Honor.

Mrs. Root: Yes, your Honor.

Mr. Binns: The Government is ready.

The Court: Will you stipulate the jury are all present and in the jury box, and the defendants present in court with their counsel?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Let the record so show.

JOSEPHINE GONZALEZ,

called as a witness by and in her own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Resumed)

By Mr. Mandel:

Q. Mrs. Gonzalez, on the 9th of October, 1945, after you returned from Westmoreland to Los Angeles and went to your trailer some time at the hour of two or three in the afternoon, according to your testimony, you then got your suitcase and your keys, is that correct? A. Yes, sir. [295]

Q. And where did you say you put the suitcase in the car?

A. In the back seat of the car on the floor.

Q. Back seat of the car? A. Yes.

Q. And I take it that you never opened it from the time that you took it from the trailer until the time you were placed under arrest, is that correct? A. Yes, sir.

Q. During the day and the early part of the evening, before you went to La Canada, you had gone to various places that you explained, hadn't you? A. In the afternoon?

Q. Yes, after you had not found Santana in the trailer you then went other places, is that correct? A. Yes, sir.

Q. And did you go to any members of your family? A. I did not.

Q. Did you go to any homes at all?

(Testimony of Josephine Gonzalez.)

A. I did not.

Q. What did you do?

A. I went to the cleaners' establishment the first thing and left my cleaning.

Q. Did you take your cleaning?

A. I did. [296]

Q. And you had your suitcase along?

A. Yes, I did.

Q. You did not put the cleaning in the suitcase, did you? A. I did not.

Q. How much cleaning did you take?

A. It was mostly men's cleaning.

Q. Suits?

A. No, I believe it was just trousers.

Q. Where did you leave those clothes?

A. In Monterey Park at the cleaning establishment.

Q. No; I mean—I understood you to say you took some clothes from the cleaners, or am I wrong?

A. From the trailer along with my suitcase and my soiled clothing.

Q. All right. In other words, you did not get any clothes from the cleaners? A. No, sir.

Q. Do you remember when you talked to the Government Treasury Agent, Mr. Polcuch?

A. Yes.

Q. In the early part of January of this year?

A. Yes.

Q. Is that right? A. Yes, sir. [297]

Q. Do you remember the conversation you had with him? A. Yes, sir.

(Testimony of Josephine Gonzalez.)

Q. Do you remember at that time that you told him in the course of your narrative that you had gone to Mexico to see Mrs. Santana?

A. I did not.

Mrs. Root: Just a moment. I will object to the question on the ground it assumes a fact not in evidence.

Mr. Mandel: If you Honor please, the record is clear, if I am not mistaken, and will bear me out.

The Witness: I did not.

Mr. Mandel: Officer Polcuch testified to that.

The Witness: I did not.

The Court: Objection overruled.

Mrs. Root: Exception.

The Court: I do not remember what all has been said in the various conversations.

Q. (By Mr. Mandel) You did not tell him that?

A. I did not.

Q. You saw Luis, this man Villalva, sometime in September of last year? A. I did not.

Q. When did you see him last?

A. It was the summer before last.

Q. What is that? [298]

A. Summer before last.

Q. You mean in 1944? A. Yes, sir.

Q. You have not seen him since the summer of 1944? Until this date?

A. I saw him when he was in the hospital in the winter.

Q. When?

A. I believe it was somewhere around in October

(Testimony of Josephine Gonzalez.)

or November, but I don't remember whether it was 1943 or 1944.

Q. From that time on you have not seen him again?

A. I did see him summer before last.

A. I am speaking of from October or November of 1943—you say that was the last time you saw him?

A. No. I said I saw him then when he was in the hospital.

Q. Now, from then on did you see him again?

A. I saw him summer before last when I come to Los Angeles.

Q. The summer before last? You mean the summer of 1943?

The Court: I think her statement is clear, counsel. It is argumentative. She said she saw him in the hospital and that the last time she saw him was during the summer of 1944. Is that correct?

Mr. Mandel: Summer before last. [299]

The Witness: That would be 1944, wouldn't it? Last summer was 1945, was it not?

The Court: And it was the summer before that.

The Witness: Yes.

Q. (By Mr. Mandel) The summer of 1944?

The Court: She has answered the question, counsel. Don't ask her that again.

Q. (By Mr. Mandel) You have not seen him since that time? A. I have not.

Q. And you don't know where he is at this time? A. I do not?

(Testimony of Josephine Gonzalez.)

Q. Do you know where he lives?

A. I know where he lived.

Q. Where? A. At 3731 Maple.

Q. Is he a member of your family?

A. He is my brother.

Q. Your brother, and you have not seen him since that time? A. I have not.

Q. He lives in Los Angeles? A. He does.

Q. You have not seen your brother from the summer of 1944 to the present time? [300]

The Court: Counsel, that has been asked and answered several times.

Mr. Mandel: I just want to make it clear.

The Court: I understand that, but I do not like the idea of re-asking questions simply for the purpose of emphasis.

Mr. Mandel: All right, your Honor.

Q. Now then, may I ask you this: When you were arrested and the officers took you out of this car—took out this opium from the suitcase, the first thing you say in your testimony is that Mr. Santana probably owned it. That is what you said?

A. I said if it was there that Mr. Santana had put it there.

Q. How did you happen to make that statement?

A. For the simple reason that he had my trailer and he was the only one that had access to it while I was gone.

Q. Were you at the trailer all—you don't know whether anybody else went to the trailer, do you, during your absence?

(Testimony of Josephine Gonzalez.)

A. Unless he took somebody there.

The Court: That is self-evident.

Mr. Mandel: That is self-evident, your Honor. All right.

Q. Then you concluded immediately when the officer showed you the opium that Mr. Santana must have been the owner [301] of it, is that right?

A. Yes, sir.

Q. No other person came to your mind at all that night that might be the owner—that it might be someone else's?

A. Nobody had access to my trailer but Mr. Santana.

Q. Your idea was to place the onus of responsibility on someone else, wasn't it.

The Court: That is argumentative, counsel. You can argue the case at the end of the case.

Q. (By Mr. Mandel) I don't know whether this has been mentioned or not, but didn't you tell me or counsel for the Government or your own counsel that you never had any tools in that suitcase before?

A. I said I had them when I picked them up from my wrecked car.

Q. You had them when?

A. I had them when I went to my wrecked car and picked them up.

Q. When was that?

A. That was about the 21st or 22nd of September when I left the hospital.

(Testimony of Josephine Gonzalez.)

Q. That was the time you put—when you had your wreck you put them in the suitcase?

The Court: Counsel, that has all been gone over time and time again. [302]

Mr. Mandel: Your Honor, I appreciate your Honor's trying to assist, but I am interested in seeing that all the rights of my client are protected. I may make mistakes, but I think my client's interests are very important.

The Court: The court is also interested in seeing that justice is done. That is the only thing the court is interested in.

Mr. Mandel: That is true as far as I am concerned.

Q. Did you discuss this case with the members of your family who testified this morning?

A. I have not.

Q. Never discussed it with them at all about their testimony in court, is that it?

A. How could I?

Q. I am asking you did you or didn't you?

A. I have not.

Mr. Mandel: That is all.

Mrs. Root: May I ask a question on redirect examination at this time?

The Court: Yes.

Redirect Examination

By Mrs. Root:

Q. Mrs. Gonzalez, I am not quite clear about the questions that counsel for the Government asked you about the various kinds of tools. Which of the

(Testimony of Josephine Gonzalez.)

tools did you leave in [303] your suitcase when Mr. Gonzalez, your husband, took the jack out of your suitcase?

A. I left two wrenches, one screwdriver, one hammer and one hitch trailer.

Q. In the suitcase? A. Yes.

Q. And you left the tools in the suitcase and the suitcase in the trailer as of October 5th?

A. Yes, ma'am.

Mrs. Root: That is all as far as I am concerned.

Recross Examination

By Mr. Binns:

Q. Mrs. Gonzalez, you met a man named Gregory in Sanger? A. I did.

Q. Had you ever seen him before?

A. I did.

Q. How many times had you seen him before?

A. About two or three times.

Q. And where had you seen him before?

A. In Imperial Valley.

Q. With Mr. Santana? A. I did.

Q. And you say that he is the one who brought Mr. Santana's Plymouth car to you at your trailer?

A. Yes, sir. [304]

Q. Was your name before you married, Vilalva? A. It was.

Q. Now then, when you made that statement that the opium must have belonged to Mr. Santana, had you ever heard of opium in connection with Mr. Santana? A. I had not.

(Testimony of Josephine Gonzalez.)

Q. Now then, do you remember this conversation you had with Mr. Beckner in the Hall of Records?

Mrs. Root: Hall of Justice, you mean.

The Witness: I do.

Q. (By Mr. Binns) Do you remember telling him in substance in that conversation, that Mr. Santana had told you to take the Plymouth and to park it with the keys in it on the east side of Brawley and then to mail a card to his wife?

A. No.

Q. You don't remember telling him that?

A. No, I didn't say that.

Q. Can you tell us what you did tell him?

A. I told him that, when I left for Imperial Valley, when we were in the trailer, I told Mr. Santana that I probably would not bring the car back because I wasn't in a position to drive and my husband was not coming back with me and I probably would come on the bus. He said if I did so to take the car to the east side in Brawley and mail a card to postoffice Box 1174 in Calexico and his nephew would come [305] and get it.

Q. That is what you told Mr. Beckner?

A. Yes, sir.

Q. And you also told the same thing to Officer Polcuch?

A. Yes, sir.

Q. How then, did Mr. Santana tell you that?

A. He did and in the trailer I didn't think I was going to come with the car. My intention wasn't to bring the car back because I was in no position

(Testimony of Josephine Gonzalez.)

to drive it, but the buses—I waited there until Tuesday morning and the buses were still on strike.

Mr. Binns: No further questions.

Mrs. Root: That is all. The defendant Gonzalez rests.

A Juror: Is it right and proper to ask a question to clear things up?

When you got to the trailer on the 9th was it locked up tight, when you returned from Brawley to the trailer on the 9th?

The Witness: You mean the trailer was locked?

The Juror: Was it locked?

The Witness: Yes, it was.

The Juror: How did you get in?

The Witness: My husband had a key and I had a key when I left or, Mr. Santana rented the trailer and I gave him my key and when I came back from Imperial Valley my husband gave [306] me his.

Mrs. Root: We have rested, if your Honor please.

The Court: Any rebuttal?

Mr. Binns: Yes, I will call Officer Polcuch.

OSCAR POLCUCH

called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was recalled and testified in rebuttal as follows:

Direct Examination

By Mr. Binns:

Q. Agent Polcuch, calling your attention to the conversation which you had with Mrs. Gonzalez in the Hall of Justice, in that conversation did she tell you that she had gone to San Francisco in the same car with Mr. Santana?

A. No. She stated that she and her husband had gone to San Francisco in their Chevrolet and that after they had arrived in San Francisco it was by chance that she met Santana there.

Mr. Binns: That is all. Cross examine.

Cross Examination

By Mr. Mandel:

Q. Agent Polcuch, I would like to ask you if in the same conversation she didn't tell you that she had gone to Mexico and seen Mrs. Santana?

A. No, she did not state that. [307]

Q. That statement was not made by you?

A. No.

Mr. Mandel: That is all.

Q. (By Mrs. Root) Mr. Polcuch, did you take that statement down word for word?

A. Not word for word. I jotted down notes on it.

Q. In other words, the statement that you gave

(Testimony of Oscar Polcuch.)

us was your interpretation of the substance of her conversation, is that right?

A. The statement I am giving here is from notes I took down at the time I was questioning her.

Q. Have you got any note on that last conversation that you testified about?

A. Yes, I have it right here.

Q. I would like to see it if I may. You are now reading from the first page of a document that was written in your handwriting, is that right?

A. Yes. This is the first page. I am just trying to determine whether it is on the first or second. Here it states:

“Santana left the trailer alone early in the morning after V. J. day.”

Further:

“Josephine asked Alfonso to take her to San Francisco to visit her brother. Josephine and [308] Alfonso left the trailer Monday after V. J. Day to San Francisco to visit Alfonso's brother, to visit Alfonso's brother Jose Gonzalez and another brother, Luis Ramon Gonzalez.”

Q. Where does it say anything in that note that “by chance” she met Santana in San Francisco?

A. It is further down here.

Q. I would like to see that.

A. “While in San Francisco Santana was brought by Alfonso to Josephine's brother's home where Josephine was living. During the conversa-

(Testimony of Oscar Polcuch.)

tion with Santana he said he was in San Francisco to collect some money from some people and"

Further that:

"she never saw Santana after that."

Q. Is there anything stated there about asking whether or not she took Santana to San Francisco or she was with Santana going to San Francisco?

A. Inspector Beckner and I asked her about that and she repeated that she and her husband went.

Q. Other than that, your statement that she and her husband went to San Francisco, you have nothing in your notes to indicate that she said, "My husband and myself alone went to San Francisco"?

A. My notes do not show that. It is from my own [309] recollection of that questioning that I also add to this.

Q. Is it from your recollection likewise that after you asked her about going to San Francisco that you might have said to her before she said, "By chance", that "I met him in San Francisco," and that you said to her, "Well, did you see Santana while in San Francisco?" And she answered, "By chance I met him in San Francisco"?

A. No, she stated that after she had arrived in San Francisco she met Santana there.

Q. By chance?

A. And as I recall it, she was surprised to see him.

Q. Did she say she was surprised to see him or "by chance" she met him in San Francisco?

(Testimony of Oscar Polcuch.)

A. I don't recall just what language she used in that regard.

Q. In fact, she talked quite rapidly, is that not true? A. That is right.

Q. And she did talk that rapidly when you were talking to her at the County Jail on January 22nd in the presence of Mr. Beckner and others?

A. That is correct; and it was necessary for us to take her over the conversation time and again.

Mrs. Root: That is all, thank you.

Mr. Mandel: Just one question more.

Q. Inspector, did Mrs. Gonzalez in the conversation that [310] you are now relating tell you that Mr. Santana had instructed her or her husband to leave the car in Mexico?

A. No. She stated that when Santana paid her \$10.00 for the rent of the trailer and when he had loaned her his car that Mr. Santana instructed her to leave the car on the east side of Brawley and to write a card to a certain box number in Calexico and that his wife or a relative would pick the car up.

Mr. Mandel: That is all, thank you.

The Court: That is all.

Mr. Binns: May I have the memorandum marked for identification, your Honor?

The Court: Yes.

(The document referred to was marked Plaintiff's Exhibit No. 16, for identification.)

Mr. Binns: I offer Government's Exhibit No. 16 in evidence.

(Testimony of Oscar Polcuch.)

The Court: It will be received.

(The document heretofore marked as Plaintiff's Exhibit No. 16, was received in evidence.)

Mr. Binns: Is that memorandum in shorthand?

The Witness: No, it is not.

Mr. Binns: The Government rests.

Mrs. Root: We rest on behalf of Mrs. Gonzalez.

Mr. Mandel: I would like to put on one witness in [311] rebuttal. I need an interpreter.

The Court: Is an interpreter present?

(No response.)

The Court: Have you any objection to using the police officer as an interpreter?

Mr. Mandel: None at all, we have no objection.

The Court: Or do you want to wait for the interpreter?

Mr. Binns: If they are willing to take Mr. Pena we will not object.

The Court: Counsel understands Spanish?

Mr. Mandel: Yes.

(Rudolph Pena was thereupon sworn as an interpreter to interpret the English into Spanish and Spanish into English.)

JESUS SANTANA,

called as a witness by and in his own behalf, having been previously duly sworn, was recalled and testified further in rebuttal as follows:

Direct Examination

By Mr. Mandel:

Q. Mr. Santana, when you came to Los Angeles with Mr. Gonzalez where did you stay?

A. I stayed at the trailer.

Q. Was Mr. Gonzalez at the trailer with you?

A. The two of us stayed at the trailer. [312]

Q. Did you at any time make arrangements with Mrs. Gonzalez or Mr. Gonzalez about paying them rental for the use of the trailer?

A. I did not. The money I gave him was to pay for the gasoline on the return trip.

Q. That was on the date of October 5th when Mr. Gonzalez left for the Valley?

A. That was October 5th at 1:00 p.m.

Q. Did you tell Mrs. Gonzalez in San Francisco, before she departed with the Chevrolet—I will withdraw that.

Did you see Mrs. Gonzalez at the time she departed for Imperial Valley?

A. We were standing on the corner when she drove by and he had previously told me that she was to pick up a friend of his that was to accompany her to Imperial Valley.

Q. And who was that?

A. The party was Gregory Garcia and his wife.

Q. Did they live in Fresno?

(Testimony of Jesus Santana.)

A. No; they were working in a ranch picking grapes. I don't know exactly where they lived.

Q. Do they live in Los Angeles?

A. No; they live in Mexicali.

Q. Did you give any instructions to anyone to give Mrs. Gonzalez the car through Mr. or Mrs. Garcia?

A. I did not tell Mr. or Mrs. Garcia anything.

Q. Did you ever have access to these keys of the trailer? A. No.

Q. Did you ever place these keys above the mantle place in the trailer or any place in the trailer?

A. I never seen those keys.

Q. Did Mrs. Gonzalez on the 9th of October ever leave any note that she had been at the trailer or anything of that kind?

A. I didn't see any note. I arrived about 9:30 or 10 o'clock to go to sleep. The only thing I noticed was the room was clean.

Q. You never saw Mrs. Gonzalez at all that day?

A. No; I did not see her that day until the officers brought her when they arrested her.

Mr. Mandel: That is all.

Mr. Binns: No questions.

Cross Examination

By Mrs. Root:

Q. When the room was cleaned did you notice that the suitcase was gone?

A. I didn't see anything—that suitcase has never been there.

(Testimony of Jesus Santana.)

Mrs. Root: That is all.

Mr. Mandel: Defendant Santana rests. [314]

The Court: Does everybody rest?

Mrs. Root: We rest.

Mr. Binns: We rest, your Honor.

Mr. Mandel: Yes.

The Court: The court on its own motion is going to dismiss Count 3 of the indictment, which is the conspiracy count, for the reason that the acts charged in the conspiracy count are the same acts charged in the substantive counts; and if there is no guilt insofar as the substantive counts are concerned, there would be no guilt in the conspiracy count.

By doing this I will simplify the problem for the court, counsel and the jury. They will have only two counts then to consider.

(Whereupon, argument of counsel and instructions by the court followed.) [315]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 7th day of June, A. D. 1946.

/s/ JACK D. AMBROSE,
Official Reporter.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Thursday, February 21, 1946, 1:30 p.m.

Instructions to the Jury by the Court

The Court: Ladies and gentlemen, you have listened to nearly two days of testimony and argument of counsel and now we come to the part I must play in the picture by giving you the instructions of the law of the case which, under your oaths as jurors, you agreed to follow to the best of your ability.

In giving these instructions I want you to bear in mind that we are dealing here in this case with the unlawful possession of opium. The undisputed facts in this case are that the opium was found in two different cars. Really the question for you to determine in this case is whether or not both defendants or either defendant had possession of that opium. In other words, we have heard the testimony of a can of opium being found in the Dodge automobile. If you are convinced beyond a reason-

able doubt that that can of opium belonged to the defendant Santana then it is your duty under your oaths to find him guilty. And if you should believe beyond a reasonable doubt that the opium found in the Plymouth automobile belonged to the defendants or either of them and Mrs. Gonzalez had knowledge that that opium was in the Plymouth automobile then it is your duty under your oaths to find them [317] guilty.

On the other hand if there should exist in your minds a reasonable doubt as to whether or not Santana knew that that can of opium was in the Dodge automobile then he is entitled to the benefit of that doubt. And if there should be a reasonable doubt in your mind as to the defendant Gonzalez having knowledge of the opium and it having been in the suitcase in the Plymouth automobile, then she is entitled to the benefit of that doubt and you should acquit her.

We have spent a day and a half covering a lot of trips and a lot of journeys but when you boil the case down it is simply a question of fact for you to determine whether this opium belonged to both parties, whether it belonged to either one of the parties or whether it did not belong to either of them. And if on any of those points you entertain a reasonable doubt, then it is your duty to bring in a verdict of not guilty. On the other hand if you are convinced beyond a reasonable doubt of the guilt of either or both of them under the instructions I am about to read to you, then it is your duty to bring in a verdict of guilty as to either

or each of them. However, if any of the foregoing comments in any manner conflicts with the instructions I am about to read to you such written instructions must control.

You are instructed that in this indictment, after the dismissal of the third count, there remains two counts which [318] are separate and distinct from each other, and although the defendants are jointly charged, that is, both are named in each count in the indictment, nevertheless separate verdicts may be found in connection with each count of the indictment and in connection with each defendant.

In Count One of the indictment the defendants, and each of them, are charged with the violation of Section 174 of Title 21 of the United States Code. That Section reads as follows:

“If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such persons shall be * * *.”

Here, you are not concerned with the penalty.

This section, commonly known as the Jones-Miller Act, was not passed as a revenue measure but is one that was passed to control the illicit traffic in narcotics. I presume I need not explain to you, as we all fully understand, that narcotics

being habit forming are of such a character that [319] it is proper for Congress to enact measure to prevent their illicit usage and to declare it a crime to import, possess, sell, or distribute narcotics unless the laws are complied with. In this connection it is proper for me to explain to you that the law provides for the lawful possession or usage or administration of narcotics, that is, in a medicinal manner, under the supervision of a licensed physician or medical practitioner to alleviate suffering in cases justified by a reputable physician.

This statute, the Jones-Miller Act, is one which prescribes a penalty for the possession of narcotics which have been unlawfully imported into the country, and the law itself place a burden upon the defendant, that is, it requires the defendant through some manner of evidence to explain the possession satisfactorily to you, the members of the jury, for mere possession alone of such narcotics is, under the law, sufficient evidence to authorize the conviction of the defendants, or either of them, unless such possession is satisfactorily explained.

The section of the law to which I have just referred is Section 181 of Title 21, United States Code, which reads as follows.

“All smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported contrary to law, and the burden [320] of proof shall be on the claimant or the accused to rebut such presumption.”

In other words, the statute says that whenever

in a trial for a violation of Section 174, the Section involved in the second count in the instant case, the defendants are shown to have possessed or to have been in possession of the narcotic drug, such possession shall be deemed sufficient evidence in itself to authorize conviction unless the defendants explain the possession to the satisfaction of the jury. It is not necessary for the Government in this case to have introduced any evidence, whatever, tending to show that the opium in question was imported contrary to law or that the defendants had knowledge that it was so imported, because the law itself raises the presumption of importation and knowledge by the defendants from the unexplained possession of the narcotic drug.

You are instructed that smoking opium is never legally imported. And I might state in that respect while the indictment alleges a certain quantity of opium it is immaterial whether the Government proves that amount as long as it is smoking opium. I believe the indictment describes it as 119 ounces. It is just as much a crime if there is only one ounce involved.

In Count Two of the indictment the defendants are charged with a violation of Section 2553 (a) of Title 26, United [321] States Code, which reads as follows:

“It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in Section 2550 (a) except in the original stamped package or from the original stamped package; and the absence of

appropriate taxpaid stamps for any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; * * *."

A subsequent section provides for the punishment in the event of violation of the section just read to you. Punishment, if any, is a matter within the province of the Court. You are concerned solely with whether or not there has been a violation of the section which sets forth that it is unlawful for any person to purchase, sell, or distribute narcotics excepting in the original stamped package or from the original stamped package.

This statute is sometimes referred to and known as the Harrison Narcotic Act.

And I further wish to call to your attention that the section which I have read declares that in the absence of the appropriate tax-paid stamps, that is to say, the revenue stamps which are required to be purchased and placed upon all packages containing narcotics, that the absence of such stamps is prima facie evidence of the unlawful purchase of narcotics. [322]

You are instructed that while the section of the law which I have just read to you was passed primarily as a revenue measure, nevertheless, it has a twofold object, one of which is for the collection of revenue and the other to control and prevent the unlawful possession, sale, or distribution of narcotics.

This section provides that all narcotics, to be lawfully possessed or bought, sold or distributed,

must be contained in either an original stamped package (that is to say, in a package upon which are affixed internal revenue stamps provided by law), or must have been sold from the original stamped package or packages.

This particular law was enacted for the purpose of permitting a restricted use of narcotics for distribution by hospitals, druggists and physicians, that is, certain exceptions are provided for in the law so as to permit the use of narcotics in a legitimate medicinal manner, but the section further provides that if anyone possesses narcotics and claims that he comes within the exceptions provided for by the statute, the duty is upon the defendant to explain and justify his possession.

While the Harrison Narcotic Act is, in a sense, a tax-raising measure in that it is a part of the Internal Revenue law, nevertheless, the Government is not required to show that it has been defrauded in any manner in order to obtain a conviction under this section. [323]

You are instructed that if you believe from the evidence in this case that the defendants had in their possession smoking opium, or other narcotics, upon which no revenue stamps were affixed and cannot satisfactorily explain the same, that that is sufficient evidence from which to find them guilty as to Count Two.

You are instructed that possession is defined as an act, fact, or condition of a person or persons having such control of property or a thing, that he

or they may enjoy it to the exclusion of all others having no better right than themselves.

Possession is synonymous with ownership, control, mastery or custody of a matter or thing.

In other words, to put it differently, possession is the exercise of such power over a thing as attaches of ownership or the possessor must have had such dominion and control of a thing as would give him power of disposal.

If you find beyond a reasonable doubt and to a moral certainty that the defendant Josephine Gonzalez did have such possession, you will find her guilty as charged.

If you further find beyond a reasonable doubt and to a moral certainty that the defendant Jesus Santana did have such possession, you will find him guilty as charged.

You are instructed that Section 550 of Title 18, of the United States Code, reads as follows:

“Whoever directly commits an act constituting [324] an offense defined in any law of the United States, or who aids, abets, counsels, commands, induces, or procures the commission, is a principal.”

Before you can convict the defendants, or either of them, in this case it must appear from the evidence, beyond a reasonable doubt, that the defendants, or either of them, and not someone else committed the offense charged. It is not sufficient that the evidence show that someone committed the crime. if it does so show, or that the probabilities are that the defendants and not someone else committed that

crime. Unless those probabilities are so strong as to remove all reasonable doubt as to the guilt of the defendants, or either of them, your verdict must be not guilty.

You are instructed that the defendants, to disprove his or her knowledge that the drug was imported into the United States contrary to law under Count One of the indictment in this case, need not prove that the drug was lawfully imported but needs only to explain his or her possession.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material [325] element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, [326] your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any

part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should [327] distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find

have been proved as seem justified in the light of your experience as reasonable men and women.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable [328] doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the

facts. The law you must accept from the court as correctly declared in these instructions.

You are instructed that if I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestions.

I have not expressed, nor intended to express, nor have I intimated nor intend to intimate, any opinion as to what witnesses are or are not worthy of credence; what facts are, or are not, established; or what inference should be drawn [329] from the evidence adduced. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times throughout the trial the court has been called upon to pass on the question whether or not certain evidence offered might properly be admitted. With such rulings and the reasons for them you are not to be concerned. Whether offered evidence is admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference as to what weight should be given the evidence, as to the credibility of a witness. In admitting evidence, to which an objection is made, the court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions and as a whole, and to regard each in the light of all the others.

The verdict to be rendered must represent the considered [330] judgment of each juror.

In order to return a verdict it is necessary that such juror agree thereto. Your verdict must be unanimous.

When you retire to your jury room to deliberate, you will select one of your number as foreman and he will sign your verdict for you when it has been agreed upon. You will then return into court with the verdict and your foreman will represent you as your spokesman in the further conduct of this case in this court.

For your convenience a form of verdict has been prepared in which you will insert your findings of either guilty or not guilty as to each defendant and date it and have your foreman sign it.

May I ask if there are any exceptions to be noted or objections to the instructions?

Mr. Mandel: None, your Honor.

Mrs. Root: None, your Honor.

The Court: Everybody is happy with the instructions.

Mr. Mandel: I think they are very fair, your Honor.

Mrs. Root: I am agreeable.

The Court: The bailiffs will be sworn.

(Whereupon, at 3:45 o'clock p.m. the bailiffs were sworn.)

The Court: Ladies and gentlemen, you will retire with the bailiffs to the jury room to deliberate. If there are any exhibits that you desire if you will notify the bailiff he [331] will hand them to you.

(The jury return to open court for further instructions at 5:35 o'clock p.m.)

The Court: Will you stipulate the jurors are all present and in the jury box and defendants with their counsel are also present?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Ladies and gentlemen, the bailiff advises the court that the jury desires to ask the court some questions. Before asking any questions I want to state to you that it would be improper and the court is not interested in how the jury stands. The court is only interested in helping you insofar as the law is concerned. The facts are your problem and not mine.

With that explanation I will be glad to listen to any question the foreman desires to ask.

The Foreman: Your Honor, the jury would be interested to know if the Government can give us the significance of the figures 59 and 60 scratched on the bottom of the cans with a sharp instrument.

The Court: It would not be proper at this time

for any additional evidence to be introduced. Whether it has any significance or not the evidence has not indicated and I presume [332] that the only significance, if any, and this is simply a presumption and is not binding upon you, that it indicates a close connection between the one can and the other group of cans, but whether it has any special significance or not is a matter upon which there is no evidence and upon which the Government is not now allowed to offer any evidence or either side. In other words, the question on that subject cannot be answered. You will have to consider the evidence that has been introduced and nothing else.

The Foreman: The other two questions are pretty much of the same nature and I suppose the court will be unable to answer those questions also. We are interested to know why the cardboard carton when seized by the State and City officers was not immediately examined for fingerprints of some kind—the exterior of the carton.

The Court: That is a question that cannot be answered. I appreciate this in a new panel. For most of you this is your first experience on a jury; and in this case as in every case whether or not all the evidence has been introduced that could have been introduced, or whether there was a search for fingerprints or not, is not within our province. There is no evidence on that. You will recall the evidence in this case was that the boxes were in the possession of the State officers for some time before they came into the possession of the Federal Narcotic Bureau. [333]

As I stated to you before, you have the undisputed evidence here in this case that narcotics were found and whoever had possession of those narcotics are guilty under this Act, under the instructions that I have given to you. Nobody has disputed the fact that they are narcotics; nobody disputed the fact that they were found where the testimony indicated they were found. Your problem is to determine whether either of the defendants or both of them or neither of them actually had possession at any time of these narcotics. In other words, if there should be a reasonable doubt in your mind that these defendants or either one of them ever had possession of the narcotics it is your duty to acquit them. On the other hand, if you are satisfied that both of them or one of them had possession and you are satisfied beyond a reasonable doubt, then it is your duty to convict.

The Foreman: The third question, your Honor, is why were State and Los Angeles City officials watching the auto court and the trailer the most of that day of October 9th, I think it was.

The Court: Well, of course that evidence, if it had been offered, would have been considered immaterial—why the officers were watching a particular place. That was brought out incidentally in the evidence in the case and whether you are to give it any weight or not is another question for you to determine. If the Government had offered to prove or [334] offered evidence as to why they were watching these people the court would not have admitted it because they are charged in this case

specifically, that is, the defendants, with having opium in their possession and whether they had opium before or there was a suspicion of having opium before, is not what they are charged with in this case. They are charged in this case with having opium in their possession and the question for you to answer is did they or did they not, these defendants or either of them, have this opium in their possession.

The opium was there. Was it put there by some mysterious third party or did one of the defendants place it in the car or did neither of the parties, or did it grow there? That is for you to determine.

Are there any exceptions to any comments the court has made? I have tried to answer these questions fairly without trying to influence the jury one way or the other as to the fact concerned.

Mrs. Root: If your Honor please, I do, but I think we should approach the bench with counsel, if we may.

The Court: Yes.

(The following proceedings were had without the hearing of the jury:)

Mrs. Root: Your Honor, I am a little concerned about the court's use of the word "possession" without its legal definition. I am wondering if just merely the use by your [335] Honor of the word "possession" if they feel they possessed it without the legal definition of "possession knowingly".

The Court: I will instruct the jury that whatever I have said must be considered in connection with the instructions I have heretofore given.

Mrs. Root: I think if that is stated it will be satisfactory.

(The following proceedings were had within the hearing of the jury:)

The Court: Any comments that I have made, ladies and gentlemen, are to be considered in connection with the instructions of the court heretofore given. It is not the intention of the court to deviate from the written instructions that I read to you in this case.

Of course where I have referred to "possession"—if either one of the defendant had opium in their car and did not know it was there it must be self-evident that person would not be guilty. If somebody, while you are in your jury room, went out and put some opium in your car and the officers came along and found it you certainly would not be guilty of any offense. The parties must have had that opium in their car knowingly, knowing it was there. They must have had that knowledge in order to be guilty. Have I made it clear?

Mrs. Root: Thank you, your Honor.

The Court: Now, I wish to state that it is very, very [336] close to the dinner hour and I was wondering if the court should not send you out to dinner. Do you think further deliberations before dinner would be of any value to you? Of course you will have to be locked up until you either have arrived at a verdict or the court is satisfied that keeping you locked up further is unnecessary.

The Foreman: Could we have about ten minutes?

The Court: Yes, you may retire to the jury room.

(Whereupon, at 5:45 o'clock p.m., the jury retired from the courtroom.)

(At 6:10 o'clock p.m., the jury returned to open court.)

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are present in court with their counsel?

Mr. Mandel: So stipulated.

Mrs. Root: Yes, your Honor.

Mr. Binns: Yes, your Honor.

The Court: Let the record so show.

Ladies and gentlemen, have you arrived at a verdict?

The Foreman: We have, your Honor.

The Court: Present it to the clerk, please. The clerk will read the verdict.

(Whereupon, the verdict of the jury was read.)

The Court: Ladies and gentlemen, is that your verdict as read? [337]

Jurors: Yes, it is.

The Court: Do you desire to have the jury polled?

Mrs. Root: We will waive it as far as we are concerned.

Mr. Mandel: I would like to have the jury polled, your Honor.

The Court: Poll the jury.

(Whereupon, the jury was polled by the clerk.)

(Whereupon, the jury was excused.)

(Whereupon, at 6:15 o'clock p.m., the proceedings in the above entitled matter were concluded.) [338]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 29th day of August A. D., 1946.

/s/ JACK D. AMBROSE,
Official Reporter.

[Endorsed]: Filed Aug. 30, 1946. [20]

[Endorsed]: No. 11285. United States Circuit Court of Appeals for the Ninth Circuit. Josephine Gonzales, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed October 8, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11285—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPHINE GONZALES,

Defendant.

ORDER

Upon reading and filing the stipulation of the parties, by their respective counsel, and the court being fully advised in the premises,

It is hereby ordered that defendant and appellant herein may file the Reporter's Transcript of proceedings in lieu of a bill of exceptions in this cause.

Dated: This 12th day of August, 1946.

/s/ FRANCIS A. GARRECHT,

/s/ W. E. ORR,

/s/ WILLIAM HEALY,

United States Circuit Judges.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION FOR FILING REPORTER'S
TRANSCRIPT OF PROCEEDINGS IN
LIEU OF BILL OF EXCEPTIONS

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective counsel, that the Reporter's Transcript of proceedings may be filed in its entirety in lieu of a bill of exceptions.

It is further stipulated and agreed that an appropriate order may be entered upon this stipulation.

/s/ JAMES M. CARTER,

U. S. Attorney,

Attorney for Plaintiff.

By ERNEST A. TOLIN,

Asst. U. S. Attorney.

/s/ GLADYS TOWLES ROOT,

Attorney for Defendant.

[Endorsed]: Filed Aug. 12, 1946.

[Title of Circuit Court of Appeals and Cause.]

POINTS RELIED UPON ON APPEAL

The points upon which Appellant relies on appeal are as follows:

I.

The evidence is insufficient to sustain the verdicts and Judgments.

a. There was no evidence personal to the accused which showed commission by her of either of the offenses charged.

b. There was no evidence that Appellant placed the opium in the suitcase where it was found or that she had no knowledge that the suitcase or automobile contained opium.

c. There was no evidence that Appellant had any connection whatsoever with the opium found in the Dodge automobile.

II.

The Trial Court erred in denying appellant's motion to suppress evidence and in overruling her objections to the introduction in evidence of the opium.

The cans contained opium which had been taken from the Plymouth automobile but were inadmissible for the reason that a *search had* not been obtained and no showing was made of the acceptance of probable cause.

III.

The Court erred in failing to instruct the jury

that appellant could not be convicted on both counts though she could be convicted on either one.

a. The offenses charged in Counts One and Two arose from the same act and the evidence introduced in support of each was identical.

IV.

The Court erred in denying appellant's motion for a new trial on the grounds that appellant could not be convicted on both counts.

/s/ GLADYS TOWLES ROOT,
Attorney for Appellant.

[Endorsed]: Filed Nov. 4, 1946.

[Title of Circuit Court of Appeals and Cause.]

MOTION FOR LEAVE TO AMEND DESIGNA-
TION OF POINTS TO BE RELIED UPON

Defendant and Appellant, through her attorney Gladys Towles Root, hereby moves this Honorable Court for leave to amend the Designation of Points to be Relied Upon by substituting for the Points heretofore designated another Point by which the constitutionality of the laws involved will be challenged and the jurisdiction of the trial court to entertain the prosecution or to try the case or pronounce judgment will be put in issue. The grounds upon which this motion is based are:

I.

Said counsel represents that although she is con-

vinced that the points heretofore designated are meritorious in substance, after much study of the record she entertains serious doubts that the errors designated were not waived under rules which require timely objections or other procedure in order that such errors may be the basis of a successful appeal.

II.

After careful research of the Federal decisions pertaining to the constitutionality of laws which delegate legislative functions and of decisions relative to the invalidity of vague, indefinite and uncertain penal laws, said counsel believes that the Congressional Acts upon which the charges contained in the instant indictment are based, to-wit, Title 21, Section 174 and 2550, are null and void.

III.

Counsel says that her failure to reach the above conclusion earlier is not due to lack of diligence on her part and in substantiation of this representation avers that she has been unable to find in any appealed case where said laws were involved a single instance, in which their constitutionality has been questioned upon the ground which she seeks leave to present, although said laws were enacted many years ago and many appeals have been taken from convictions under them by able attorneys. Hence, said counsel feels that her failure to discover the invalidity of said laws does not indicate lack of legal acumen or of labor upon or study and consideration of the case.

IV.

The Point which Appellant desires to, and if permitted, will present in lieu of those heretofore designated, is:

V.

Section 174 of Title 21 of the United States Code and Section 2550 (a).

Each of these Sections are violative of the Due Process Clause of the 14th Amendment To The Constitution of the United States, because: 1. They and each of them delegate to the jury uncontrolled power to find the accused guilty and to base this verdict upon bias and prejudice, in that each of said laws requires that, possession of the inhibited drug having been proved the defendant may be found guilty unless the accused explains his possession to the satisfaction of the jury.

/s/ GLADYS TOWLES ROOT,

Attorney for Appellant and
Defendant.

So ordered:

/s/ FRANCIS A. GARRECHT,

Senior United States Circuit
Judge.

[Endorsed]: Filed Jan. 3, 1947.

No. 11285

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

vs.

JOSEPHINE GONZALES,

Appellant.

APPELLANT'S OPENING BRIEF.

GLADYS TOWLES ROOT,
631 Bartlett Building, Los Angeles 14,
Attorney for Appellant.

FILED

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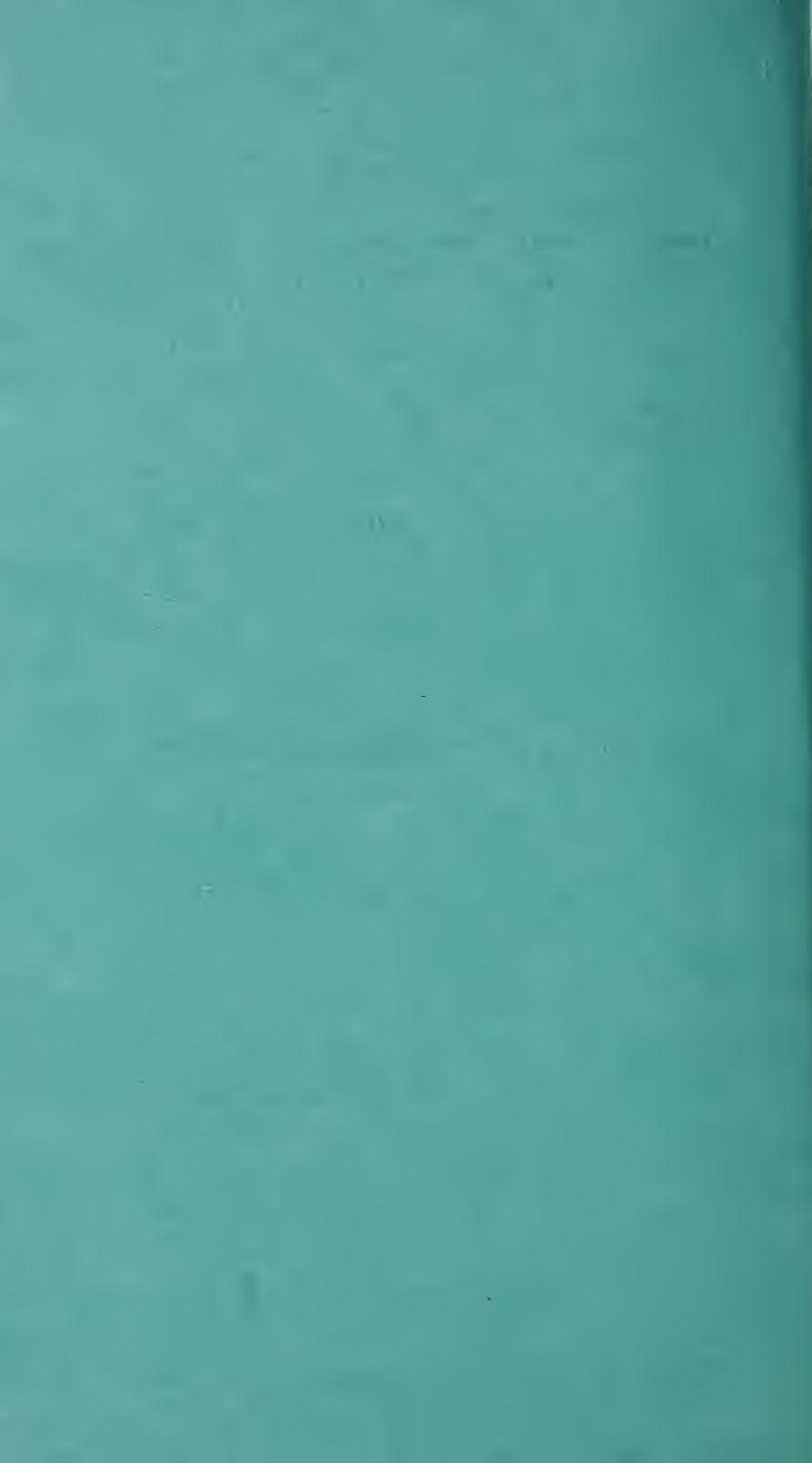


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Boyd v. United States, 30 F. (2d) 900.....	2, 6
Brock v. Superior Court, 12 Cal. App. (2d) 605.....	14
Bueneman v. Santa Barbara, 8 Cal. (2d) 405.....	14
Butterfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525.....	5
City of Tulsa v. W. Bell Tel. Co., 5 F. Supp.; affd. 75 F. (2d) 343	5
De Salvo v. United States, 2 F. (2d) 222.....	13
Hackensack Tr. Co. v. Voight, 75 F. (2d) 270.....	5
Hewitt v. Board of Med. Examiners, 183 Cal. 636.....	6
Marshall Field & Company v. Clark, 143 U. S. 649, 36 L. Ed. 294	5
Morlen v. United States, 13 F. (2d) 625.....	2
No Choy Fong v. United States, 245 Fed. 301.....	3
Panama Refining Company v. Ryan, 293 U. S. 388, 79 L. Ed. 449	5, 6
Peppers, In re, 189 Cal. 682.....	6
Rosenberg v. United States, 13 F. (2d) 369.....	2
Schecter v. United States, 295 U. S. 94, 79 L. Ed. 1570.....	5, 6
Wayman v. Southard, 10 Wheat. 1, 6 L. Ed. 525.....	5
Weaver v. Palmar Bros. Co., 270 U. S. 402, 70 L. Ed. 655.....	14
Wong Lung Sing v. United States, 3 Fed. 780.....	10
Yee Hem v. United States, 268 U. S. 178, 69 L. Ed. 904.....	2, 3, 4, 5
Yick Wo v. Hopkins, 115 U. S. 356.....	14

STATUTES

United States Code, Title 21, Sec. 174.....	1, 2, 4, 6, 13
United States Code, Title 26, Sec. 2553(a).....	1, 9, 13
40 United States Statutes 1131.....	10

No. 11285

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

vs.

JOSEPHINE GONZALES,

Appellant.

APPELLANT'S OPENING BRIEF.

Appellant was convicted on each of two counts of an indictment which charged Violation of Title 21, U. S. C., Section 174 in the first count and Violation of Section 2553(a) of Title 26 U. S. C. in the second count.

One ground will be relied upon for reversal of the judgment below, namely:

It is appellant's contention that in authorizing the jury to reject any explanation which the accused may offer for the sole reason that "such explanation is not to the satisfaction of the jury", Congress has delegated its legislative function and has provided no guide or standard for its exercise by the jury. Also, this language, "to the satisfaction of the jury", is so vague and indefinite, that it permits juries to exercise unlimited discretion and to create their own standards and to base their verdict on prejudice, animus and whimsy, alone, and permits them to arbi-

trarily refuse to give consideration to the most logically convincing explanation which the realities of life in our complex social relationships and conditions are capable of bringing about.

For both of these reasons appellant insists that the acts involved are violative of the due process clause of the 14th Amendment to the Constitution of the United States, and that as construed and applied in the instant trial said laws are null and void for the same reasons.

The pertinent language of Title 21, Section 174 reads:

“If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall be fined not more than \$5,000 and imprisoned for not more than ten years, whenever on a trial for violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.”

The presumptions created by the acts herein involved are reasonable and valid. (*Yee Hem v. United States*, *supra*; *Boyd v. United States*, 30 F. (2d) 900; *Morlen v. United States*, 13 F. (2d) 625; *Rosenburg v. United States*, 13 F. (2d) 369.) But Section 174 of Title 21, does not stop with the creation of presumptions. It declares

that proof of possession of such drug shall be deemed sufficient evidence to authorize convictions unless the defendant shall explain the possession to the satisfaction of the jury. (Emphasis added.)

Clearly, we have in this language a delegation of power, and unquestionably this delegation of power permits the exercise of an arbitrary discretion. The zeal of the Congress to stamp out a serious vice is commendable but no law which violates constitutional guarantees is commendable nor will it be sustained regardless of good legislative intentions or the nature of the evil attempted to be cured. The decisions construing this act have recognized that they require that the explanation to be given in rebuttal of the presumptions created must be "to the satisfaction of the jury."

In *No Choy Fong v. United States*, 245 Fed. 301, reference being to what is now Title 21, Section 174, it is said,

"That if, upon trial, a person is shown to have had opium illegally imported in his possession, such possession shall be deemed enough evidence to authorize conviction unless such possession shall explain the possession to the satisfaction of the jury."

In *Yee Hem v. United States*, 69 L. Ed. 904, 268 U. S. 177, where the offense charged was that inhibited by a somewhat similar law, the court approved an instruction which after stating the presumptions, reads in part as follows:

"The lower court * * * charged the jury in substance that the burden of proof was on the accused to rebut such presumptions; and that it devolved upon him to explain that he was rightfully in

possession of the smoking opium,—at least to explain it to the satisfaction of the jury.”

The only question presented, it is said, “is whether Congress has power to enact the provisions arising from the unexplained possession of such opium.” Thus the question herein presented was not considered.

Appellant contends that Section 174 exceeds the widest limit allowed to legislative power in requiring that to overcome the presumption of guilt arising from mere possession of opium the defendant’s explanation must be “to the satisfaction of the jury.”

Every word of the quoted language which ends the provision is plain, unambiguous English. There is no room for statutory construction. Whatever satisfies the jury suffices and no explanation, no matter how conclusive or demonstrative which does not satisfy the jury, will suffice to overcome the presumptions.

Surely no court of justice will say that Congress meant by these plain words that the explanation required is a mere *preponderance of the evidence* or that it is *proof beyond a reasonable doubt*.

It could be held with equal logic that the words in question mean that the jury are to be satisfied if, from the evidence they suspect that the defendant is innocent. It is within the province of the Legislative Department of Government to enact laws by which presumptions are created, and legislative presumptions which assign to proof of a designated fact the force and effect of proof, *prima facie*, or of greater strength, of another fact, are mere rules of evidence, and are valid. (In *Yee Hem v. U. S.*, *supra*.) This power of legislation is qualified by the due process

clause of the Federal Constitution, by virtue of which a law which essays to require the finding of an ultimate fact upon proof being made of a basic where no logical connection exists between the two is arbitrary, capricious and void. (*Yee Hem v. United States*, 268 U. S. 178, 69 L. Ed. 904.)

Thus although it is established that the subject matter of the acts in question are within the province of legislative function of Congress, such a law may be declared null and void as an infringement of rights guaranteed by the due process clause of the 14th Amendment for other reasons than the one passed upon in the *Yee Hem* case. Congress may not delegate its legislative functions, unless it shall "lay down an intelligible principle" or shall "fix standards" to which the officer or body to which such delegation is made "is directed to conform." The law is so declared in *Schechter v. United States*, 295 U. S. 94, 79 L. Ed. 1570 and *Panama Refining Company v. Ryan*, 293 U. S. 388, 79 L. Ed. 449, and decisions quoted or cited therein; *Marshall Field & Company v. Clark*, 143 U. S. 649, 36 L. Ed. 294; *Butterfield v. Stranahan*, 192 U. S. 470, 48 L. Ed. 525; *Wayman v. Southard*, 10 Wheat. 1, 43, 6 L. Ed. 253, 262. A law which is unconstitutional is null and void. It confers no rights and imposes no duties. *City of Tulsa v. W. Bell Tel. Co.*, 5 Fed. Supp. Confirmed 75 F. (2d) 343. Cert. denied, 295 U. S. 744, 79 L. Ed. 1690; *Hackensack Tr. Co. v. Voight*, 75 F. (2d) 270.

It is elementary that laws must be clear and certain in defining offenses. That a law imposing penal punishment which law is vague, uncertain and indefinite as to any material element within its purview, is void is a general

and fundamental rule which has been frequently upheld and given effect. *Schechter v. United States*; *Panama Refining Co. v. United States*, both, *supra*; *Hewitt v. Board of Med. Examiners*, 183 Cal. 636, 192 Pac. 442; *Ex parte McNulty*.

In *Boyd v. United States*, 30 F. (2d) 900, this court, after stating that possession of the narcotic was admitted, said:

“It is therefore a question for the jury whether his explanation of such possession was satisfactory.”

This is undoubtedly plain meaning of the law, but the acts add, “to the jury,” and fail to provide any rule by which the jury may not or must be satisfied. In the absence of any such rule it is obvious that the matter is left at large. A jury may, as far as these acts are concerned, refuse to be satisfied by demonstrative proof which is uncontradicted or it might acquit on the most fanciful suspicion based on an accomplice’s conjecture. The jury may even consciously act on prejudice against anyone who would associate with the person whom the evidence has shown actually had exclusive possession of the drug, and juries have been known to act on that type of prejudice even when the law did not authorize them to do so.

The *Boyd* case involved Title 21, U. S. C. Section 174, but the question herein presented was not raised in that case, and was not decided.

The opinion in the case of *In re Peppers*, 189 Cal. 682, elucidates appellants Thesis in respect to the unconstitutionality of the instant act by holding: 1. that the language of The California Fruit and Vegetable Standardization Act is so vague and indefinite in its provisions

that it is void, and: 2. That, since, by reason of its vague and uncertain terms, “no standard whatever” is “fixed by the statute”, it cannot be the basis of a delegation of power *to a jury to erect for itself a standard*. The language and reasoning of the opinion appears to be unanswerable and it seems appropriate to quote it at length, as follows:

“The particular portion of the foregoing provisions of said act brought in question by the applicant’s attack upon the two remaining counts in said complaint is the provision therein that ‘oranges shall be considered unfit for shipment when frosted to the extent of endangering the reputation of the citrus industry, if shipped.’ It is the applicant’s contention that the above-quoted clause in said act is too vague, indefinite and uncertain, standing alone, to furnish the basis of a criminal prosecution such as is sought by the third count of said complaint; and that it is also too vague, indefinite and uncertain to furnish the basis for such a definition thereof by the department of agriculture as is alleged in, and attempted to be enforced by, the second count of said complaint. We are of the opinion that both of these contentions must be sustained. Considering the said clause in said act by itself and unaided by the attempted definition of the department of agriculture, it will be seen that it does not purport to forbid the shipment of all frosted oranges. It thus concedes that oranges may be frosted and may still be the proper subject of shipment and consumption without in any way ‘endangering the reputation of the citrus industry.’ What defect then shall render certain of such oranges unfit for shipment as ‘endangering the reputation of the citrus industry?’ What is the reputation of the citrus industry? Is it for the production and shipment of oranges of a

certain standard of color, or of sweetness, or of juiciness, or of palatability? How is the producer whose oranges have been touched with frost to know, from the terms of this act, whether or when he will be violating it in offering his fruit for shipment? By what standard is the complainant to reach the conclusion that the provisions of this clause of the act are being violated by one shipper and not by another? What limitation is therein placed upon the power of the magistrate or of the jury to arbitrarily determine that one shipper of frosted oranges has violated the statute, and that another, shipping precisely the same quality of oranges, has not? The vice of this sort of legislation is quite aptly pointed out in the case of *United States v. Reeve*, 92 U. S. 215 (23 L. Ed. 563, see, also, *Rose's U. S. Notes*), in which the court says: 'If the legislature undertakes to define a new offense and provide for its punishment, it should express its will in language that need not deceive the common mind; every man should be able to know with certainty when he is committing a crime. . . . It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and see who could be rightfully detained and who should be set at large.' In the case of *Louisville etc. Railroad Co. v. Commonwealth*, 99 Ky. 132 (59 Am. St. Rep. 457, 33 L. R. A. 209, 35 S. W. 129), wherein the court was considering the validity of an act providing that a railroad company should not charge more than a reasonable or just rate of fare for the transportation of passengers, the court, in holding the act void for uncertainty, said: 'There is no standard whatever fixed by the statute, or attempted to be fixed, by which the carrier may regulate his conduct; and it seems clear to us to be entirely repugnant

to our system of laws to punish a person for an act the criminality of which depends not upon any standard erected by the law which may be known in advance but on one erected by a jury, and especially so as that standard must be as variable and uncertain as the views of different juries may suggest and as to which nothing can be known until after the commission of the crime.’ ”

II.

The Conviction and Judgment Under Count II of the Indictment Is Void.

Section 2553 of Title 26, U. S. C. is the basis of the charge contained in Count II.

Evidence was produced tending to establish such possession of the inhibited drug as is penalized by the act.

Appellant contends that as said act has been construed and applied in this case and others it is fatally vague and indefinite in respect to the force and effect of the presumption which the law creates as the result of proof of possession.

The section reads:

“2553. Packages

(a) General requirement. It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in section 2550(a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps for any of the aforesaid drugs shall be *prima facie* evidence of a violation of this subsection by the person in whose possession same may be found; and the possession of any original stamped package containing any of the afore-

said drugs by any person who has not registered and paid special taxes as required by sections 3221 and 3220 shall be *prima facie* evidence of liability to such special tax.

(b) Exceptions in case of registered practitioners. The provisions of subsection (a) shall not apply—

(1) Prescriptions. To any person having in his or her possession any of the drugs mentioned in section 2550(a) which have been obtained from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3221; and where the bottle or other container in which such drug may be put up by the dealer upon said prescription bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person writing said prescription; or

(2) Dispensations direct to patients. To the dispensing, or administration, or giving away of any of the aforesaid drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this subchapter of the drugs so dispensed, administered, distributed, or given away. 53 Stat. 271."

In *Wong Lung Sing v. United States*, 3 Fed. 780, the charge was laid under Count II of the indictment as a violation of Section 1, of the act of December 17, 1914, as amended February 24, 1919 (40 Stat. 1131), called

“The Harrison Narcotic Act”, which is apparently not distinguishable from the instant act of December 14, 1914. In passing upon appellant’s contention that the evidence was insufficient to sustain the verdict of guilty, the court asseverated:

“From the evidence of the possession of the suitcase with the contraband drugs, it was permissible to infer guilt, unless the possession was explained to the satisfaction of the jury. * * * Defendant, having failed to make such satisfactory explanation, must abide by the verdict.”

In the instant case the Court instructed the jury:

“And I further wish to call your attention that the section which I have read declares * * * that the absence of stamps is *prima facie* evidence of the unlawful purchase of narcotics.”

Again the Court declared:

“But the section further provides that if anyone possesses narcotics and claims that he comes within the exceptions provided for by the statutes, the duty is upon the defendant to explain and justify his possession.”

It is noteworthy that no express provision to this effect is contained in the section proper, or the exceptions which are set forth. [Rep. Tr. of Proc. p. 323.] Later on, the Court told the jurors that if they believed the defendants had in their possession unstamped smoking opium or other narcotics “and cannot satisfactorily explain the same, that is sufficient from which to find them

guilty as to Count II", and finally the Court left the jury no option but directed the jury's decision as follows:

"If you find beyond a reasonable doubt and to a moral certainty that the defendant Josephine Gonzalez did have such possession, you will find her guilty as charged."

While the Court gave the usual formal instructions as to reasonable doubt as construed with the instructions quoted above such reasonable doubt could only apply to the determination of whether the defendants had possession of the contraband drugs. However, if doubt could exist as to this matter it is removed by an instruction which the Court gave upon the occasion of the jury returning to the jury room to ask certain questions, in answer to one of which the Court announced its interpretation of the law to be as follows:

"As I stated to you before, you have the undisputed evidence here in this case that narcotics were found and whoever had possession of those narcotics are guilty under this Act, under the instructions that I have given to you. Nobody has disputed the fact that they are narcotics; nobody disputed the fact that they were found where the testimony indicated they were found. Your problem is to determine whether either of the defendants or both of them or neither of them actually had possession at any time of these narcotics. In other words, if there should be a reasonable doubt in your mind that these defendants or either one of them ever had possession of the narcotics it is your duty to acquit them. On the other hand, if you are satisfied that both of them or one of them had possession and you are satisfied beyond a reasonable doubt, then it is your duty to convict."

Therefore appellant contends that said Section 2553 is so vague and indefinite in its provision concerning the effect of the terms "*prima facie* evidence of a violation of this subsection" and "*prima facie* evidence of liability to such special tax" that no intelligible standard or measure of the burden intended to rest upon the defendant as a result of said quoted terms can be found in the act and the jury to which the section has been read have no legal guide to follow.

It seems clear that the trial judge interpreted the language of that section, probably in the light of such other acts in *juri materia* therewith as Section 174 of Title 26, as so definite and certain that the jury are left little or no discretion when and if the element of possession is established beyond a reasonable doubt.

A similar construction was given said language by the trial judge in *De Salvo v. United States*, 2 F. (2d) 222. However the Circuit Court of Appeals (8th Cir.) said that an instruction was erroneous which read: "If you find that he was in possession of these narcotics on that day, then it is your duty to return a verdict of guilty as having made an unlawful purchase of narcotics at that time." In reversing the decision the opinion states that the presumption is not one of law but a presumption of fact.

The vice of the vagueness and uncertainty in said Section 2553 is especially confusing and prejudicial to the rights of defendants, where, as in the instant case, the charge of its violation is associated in the indictment, trial and instructions with a violation of Section 174 of Title 21, which in plain terms requires that the defendant's explanation must be "to the satisfaction of the jury."

A statute, valid on its face, may be unconstitutionally applied, and when this is done, one injured may enjoin its enforcement or have other appropriate remedy. *Weaver v. Palmer Bros. Co.*, 270 U. S. 402, 70 L. Ed. 655; *Yick Wo v. Hopkins*, 115 U. S. 356, 373; *Brock v. Superior Court*, 12 Cal. (2d) 605; *Bueneman v. Santa Barbara*, 8 Cal. (2d) 405.

The legal effect of a trial under this act, especially where, as herein, the accused produced an explanation of her possession of the inhibited drug, is a denial of any trial by jury.

It is submitted that whether or not it be held that his act is fatally vague and indefinite as appellant contends, it cannot be doubted that as construed and applied herein it must be so regarded, otherwise the able trial judges in this case and in the *De Salvo* case would not have been confused and misled, and appellant's counsel is convinced that in the interest of justice the judgments on both counts should be reversed.

Respectfully submitted,

GLADYS TOWLES ROOT,

Attorney for Appellant.

No. 11285.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

JOSEPHINE GONZALES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee,

APPELLEE'S BRIEF.

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TOPICAL INDEX

	PAGE
Jurisdiction	1
Statutes involved	2
Statement of the case.....	3
Question presented	3
Argument	4
Conclusion	5

TABLE OF AUTHORITIES CITED

CASES.

PAGE

Beland v. United States, 100 F. (2d) 289; cert. den. 306 U. S. 636	4
Brolan v. United States, 236 U. S. 216.....	4
Casey v. United States, 276 U. S. 413.....	4
Hooper v. United States, 16 F. (2d) 868.....	4
Howard v. United States, 75 F. (2d) 562; cert. den. 295 U. S. 740	4
Morlen v. United States, 13 F. (2d) 625.....	4
Mullaney v. United States, 82 F. (2d) 638.....	4
Ng Choy Fong v. United States, 245 Fed. 305; cert. den. 245 U. S. 669.....	4
Ng Sing v. United States, 8 F. (2d) 919.....	4
Parmagin v. United States, 42 F. (2d) 721; cert. den. 283 U. S. 818.....	4
Pon Wing Quong v. United States, 111 F. (2d) 751.....	4
Rosenburg v. United States, 13 F. (2d) 369.....	4
Teter v. United States, 12 F. (2d) 224; cert. den. 273 U. S. 706	4
United States v. Doremus, 249 U. S. 86.....	4
United States v. Liss, 105 F. (2d) 44.....	4
Wong Lung Sing v. United States, 3 F. (2d) 780.....	4
Yee Hem v. United States, 268 U. S. 178.....	4

STATUTES

Criminal Code, Sec. 37 (18 U. S. C., Sec. 88).....	1
Harrison Narcotic Act (26 U. S. C., Sec. 2553(a)).....	1, 2
Judicial Code, Sec. 24 (28 U. S. C., Sec. 41(2)).....	1
Judicial Code, Sec. 128 (28 U. S. C., Sec. 225).....	1
Narcotic Drugs Import and Export Act (21 U. S. C., Sec. 174)	1, 2

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Appellant,

vs.

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Appellee,

APPELLEE'S BRIEF.

Jurisdiction.

Appellant was indicted under the Narcotic Drugs Import and Export Act (21 U. S. C. §174), the Harrison Narcotic Act (26 U. S. C. 2553(a)) and Section 37 of the Criminal Code (18 U. S. C. 88), [R. 2-5.]¹

The District Court had jurisdiction under Section 24 of the Judicial Code (28 U. S. C. 41(2)). Judgment was entered March 18, 1946 [R. 14].

Notice of appeal was filed on March 22, 1946 [R. 14-15]. This Court has jurisdiction under Section 128 of the Judicial Code (28 U. S. C. 225).

¹The references preceded by the letter "R" are to the printed record on appeal in this case; those preceded by the reference "A. B." are to the appellee's brief.

Statutes Involved.

The Narcotic Drugs, Import and Export Act provides in part as follows (21 U. S. C. 174):

“If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assist in so doing or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall upon conviction be fined not more than \$5,000 and imprisoned for not more than ten years. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.”

The Harrison Narcotic Act provides in part as follows (26 U. S. C. 2553(a)):

“It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in section 2550(a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps for any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by sections 3221 and 3220 shall be prima facie evidence of liability to such special tax.”

Statement of the Case.

On January 9, 1946, the appellant and one Jesus Santana were indicted in the United States District Court for the Southern District of California, Central Division, in three counts, which charged, respectively, violations of the Narcotic Drugs Import and Export Act, in Count I [R. 2-3], the Harrison Narcotic Act, in Count II [R. 3], and a conspiracy to commit an offense against the United States with reference to the receipt, transportation and concealment of opium imported contrary to the laws of the United States, in Count III [R. 3-5].

On February 19, 1946, the District Court denied motions to suppress evidence [R. 10-11], and on February 20, 1946, a trial was had before the District Court and a jury [R. 11, 18 ff.]. On February 21, 1946, appellant and her co-defendant were both found guilty as charged in Counts I and II of the Indictment [R. 11-12]. Thereafter, on March 18, 1946, the District Court sentenced the appellant to imprisonment for a period of three years, and to pay a fine of \$10 on Count I, suspending imposition of sentence on Count II for a period of five years, commencing at the expiration of the sentence on Count I, during which five-year period the defendant was to remain on probation [R. 12-14].

Question Presented.

The sole question presented by the appellant upon this appeal is whether the two statutes under which she was convicted are constitutional.

Argument.

We see no point in engaging in extensive discussion as to the constitutionality of the two statutes involved in this case; their constitutionality, and in particular the evidentiary presumptions which the statutes permit from the unexplained possession of narcotics, have been judicially considered and upheld. See, *e. g.*, *Yee Hem v. United States*, 268 U. S. 178; *Brolan v. United States*, 236 U. S. 216; *United States v. Doremus*, 249 U. S. 86; *Casey v. United States*, 276 U. S. 413; *Teter v. United States*, 12 F. (2d) 224 (C. C. A. 7), cert. den. 273 U. S. 706; *Hooper v. United States*, 16 F. (2d) 868 (C. C. A. 9); *Rosenburg v. United States*, 13 F. (2d) 369 (C. C. A. 9); *Ng Choy Fong v. United States*, 245 F. 305; (C. C. A. 9), cert. den. 245 U. S. 669; *Ng Sing v. United States*, 8 F. (2d) 919 (C. C. A. 9); *Parmagin v. United States*, 42 F. (2d) 721 (C. C. A. 9), cert. den. 283 U. S. 818; *Howard v. United States*, 75 F. (2d) 562 (C. C. A. 7), cert. den. 295 U. S. 740; *Morlen v. United States*, 13 F. (2d) 625 (C. C. A. 9); *Pon Wing Quong v. United States*, 111 F. (2d) 751 (C. C. A. 9); *Mullaney v. United States*, 82 F. (2d) 638 (C. C. A. 9); *United States v. Liss*, 105 F. (2d) 44 (C. C. A. 2); *Beland v. United States*, 100 F. (2d) 289 (C. C. A. 5), cert. den. 306 U. S. 636; *Wong Lung Sing v. United States*, 3 F. (2d) 780 (C. C. A. 9).

We also see no point in discussing the holding of the various cases cited by appellant in her brief (A. B. 5, 6, 14), which deal with generalities and principles of no moment to this case.

Nor does there appear to be any necessity for discussing the purported distinctions which appellant apparently seeks to draw in her brief between the holding in the cases which sustain the constitutionality of the statutes in this case, and her theory of unlawful delegation of power by the Congress of the United States (A. B. 3, *ff.*), and the asserted vagueness and indefiniteness of the statutory provisions (A. B. 9, *ff.*). Suffice it to say that the statutes in this case have been held to be constitutional both as to their terms and provisions, and with reference to the constitutionality of Congress' action in legislating as it did. (See, for example, the cases cited above.)

Conclusion.

There is patently no merit to the contentions made by appellant. The statutes in this case have been declared constitutional, both by the Supreme Court and various Circuit Courts of Appeal, including this Court. The judgment should be affirmed.

Respectfully submitted,

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APPELLANT'S REPLY BRIEF.

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APPELLANT'S REPLY BRIEF.

Appellee's brief fails to rebut or to even argue the questions presented in Appellant's Opening Brief.

Under the caption "Argument" Appellee's brief enumerates a long list of cases which, it is said, have upheld the constitutionality of the acts involved herein with respect to the "particular evidentiary presumptions which the statutes permit from unexplained possession of narcotics." This neither adds nor detracts from the grounds upon which said statutes are attacked in this appeal.

Appellant's Opening Brief (p. 2) points out that "The presumptions created by the acts herein involved are reasonable and valid," citing a number of decisions which are included in Appellee's said list.

Thus the instant appeal does not question the validity of said presumptions. However, Appellant asserts, and Appellee fails to deny that the particular ground upon which said acts are herein challenged has never been passed upon in any prior decision. It is hornbook law that courts do not themselves look for grounds upon which to hold laws unconstitutional and generally consider and decide only those grounds which are properly presented by the parties.

The instant appeal presents and argues the ground that the words "to the satisfaction of the jury" as the sole measure of the nature, scope and sufficiency of the explanation which a defendant may make, violates the due process clause of the Federal Constitution because it delegates to the jury the function and power of fixing its own standards, or deciding arbitrarily, without any standard or rule what character and measure of the scope and sufficiency of the required explanation shall be in each case. Thus the jury's decision is permitted to be capricious and arbitrary, and a purely legislative function has been unconstitutionally delegated to jurors.

Appellant's brief also asserts and argues that in view of the import of the words "to the satisfaction of the jury" the delegation of power permits inferences to be drawn, even if proper and reasonable explanations are given, as to which there is no logical connection between the premise, to-wit, possession of narcotics, and the fact presumed. This ground of attack, it is claimed, and not denied by Appellee, has never been considered or passed upon by the Federal appellate courts, but renders the Statutes unconstitutional under said due process clause.

The opening brief filed by appellant further shows that the conviction under Count II herein is void because of the further ground that, by the Court's instructions, rulings and statements to the jury, the act therein involved was construed and applied as though it were worded precisely as Section 174 is phrased.

Appellant regards the failure of the Appellee's Brief to discuss these issues as tantamount to admitting the merit of Appellant's said contentions and submits the appeal without further argument.

Respectfully submitted,

GLADYS TOWLES ROOT,

Attorney for Appellant.

